

IN THE CIRCUIT COURT OF  
THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,  
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, et al.,

Defendants.

\_\_\_\_\_  
Miami-Dade County Courthouse  
Miami, Florida  
8:55 a.m.

Wednesday, January 20, 1999

TRIAL - VOLUME 182

The above-styled cause came on for trial  
before the Honorable Robert Paul Kaye, Circuit Judge,  
pursuant to notice.

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APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

DOUGLAS CHUMBLEY, ESQ.

R. BENJAMINE REID, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard

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(APPEARANCES - Continued)

DEBEVOISE & PLIMPTON

ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.

On behalf of Defendant The Council for Tobacco Research

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL

DAVID L. ROSS, ESQ.

On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ

JOSE MARTINEZ, ESQ.

On behalf of Defendant Dosal Tobacco Corp.

and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN

AARON MARKS, ESQ.

NANCY STRAUB, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

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I N D E X

WITNESS PAGE

WALKER MERRYMAN

(Deposition read to jury): 20143

ELLEN MERLO

(Deposition read to jury): 20170

E X H I B I T S

PLAINTIFFS' OFFERED ADMITTED FOR ID

EXHIBITS PAGE PAGE PAGE

None.

E X H I B I T S

DEFENDANTS' OFFERED ADMITTED FOR ID

EXHIBITS PAGE PAGE PAGE

None.

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1 (Whereupon, the following proceedings were had:)

2 THE COURT: Is there anything we can do now?  
3 Are we waiting for Chumbley or what?

4 MR. ROSENBLATT: We can -- we could start  
5 with Merlo.

6 THE COURT: I can go through the Merlo depo.

7 MR. HEIM: Do you want to do the Merlo depo  
8 first?

9 THE COURT: Well --

10 MR. HEIM: What I'm going to need, Judge, if  
11 I may, is five minutes at some point -- it doesn't have  
12 to be right now -- to consult with other defense  
13 counsel about this issue with regard to the President's  
14 speech last night.

15 THE COURT: Yes. That's no problem.

16 MR. HEIM: But we could, while we're waiting  
17 for others --

18 THE COURT: Let's try the Merlo thing,  
19 because there's a lot of areas in here which, even  
20 though I read through it and made some initial  
21 decisions -- we didn't do any of this yet, right?

22 MS. LUTHER: Right.

23 THE COURT: This was the one that was  
24 basically complete, but it's a Philip Morris document  
25 more than anything else.

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1 MR. HEIM: It's a Philip Morris witness.  
2 THE COURT: All right. So let's start with  
3 Page 3. Before we get into that, the first depo to  
4 read this morning is --  
5 MR. ROSENBLATT: Walker Merryman.  
6 THE COURT: Merryman. That's done. And then  
7 we'll do this one. And then we have the others. Okay.  
8 MR. ROSENBLATT: And I've got documents I can  
9 publish, if we need to fill some time.  
10 THE COURT: All right. Well -- all right.  
11 Page 3, 7 through 19, unopposed.  
12 Page 11, 8 through 24, unopposed.  
13 And Line 25, you objected to Line 25 and on  
14 top of 12, Lines 1 and 9, but I didn't know why.  
15 MR. HEIM: Well, it was just simply because  
16 it referred -- you'll see this objection, the next few  
17 objections. It refers, basically, to her working in  
18 Canada. It's not a big deal.  
19 THE COURT: I didn't have any problem with  
20 that.  
21 So Page 11, objection overruled.  
22 Page 12, objection overruled.  
23 13, Lines 18 through 25, unopposed.  
24 14, Lines 1 through 24, unopposed.  
25 And objections overruled on 14 and Page 15  
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1 and 16.  
2 On 17, Lines 1 through 5, overruled.  
3 Sustained as to 6 through -- now, I didn't  
4 understand what this 18, Lines 19 through 25, is.  
5 There's a squiggle line. I think that's somebody's  
6 counter -- I couldn't figure it out.  
7 MR. HEIM: 18, 19 through 25.  
8 THE COURT: Yes. It doesn't mean --  
9 MR. HEIM: Well, whatever it is, it's okay.  
10 THE COURT: Okay. Page 19, the same thing,  
11 Lines 1 through 4. But your objection on 19 to 25 is  
12 overruled.  
13 On 20, Lines 1, 2 and 3, overruled. And I  
14 granted the counterdesignation on Page 20, 4 through  
15 25, and Line 1 through 25 on Page 21.  
16 25, 6 through 25, unopposed.  
17 26, 1 through 21, unopposed; overruled 22  
18 through 25. And all of the objections on Page 27.  
19 MR. HEIM: I'm sorry, Judge. Page 26.  
20 THE COURT: Yes.  
21 MR. HEIM: Okay. So page -- Page 26, Line 22  
22 through 27, that's all in? Is that it?  
23 THE COURT: Yes.  
24 MR. HEIM: Okay.  
25 THE COURT: As is 6 through 25 on Page 27.  
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1 MR. HEIM: Okay.  
2 THE COURT: And all of Page 28, overruled.  
3 Page 29, 1 through 10, overruled.  
4 13 through 16, overruled.  
5 17 through 20, sustained.

6 MR. HEIM: 17.  
7 THE COURT: 30, Page 30, Lines 6 through 15,  
8 sustained.  
9 18 and 19, sustained.  
10 20 through 24, sustained.  
11 Page 31, 1, 2 and 3 and 4, 5 and 6 I  
12 sustained objections -- well, actually, you asked for  
13 those as counterdesignations, but I kept them out. 1  
14 through 6 is out. Or 1 through 7, I'm sorry. 1  
15 through 7.  
16 Then 8 through 25 was overruled.  
17 32, Lines 1 through 17, overruled; 18 through  
18 25, no objection.  
19 33, 1 through 25, overruled.  
20 Page 34, 1 through 25, overruled.  
21 Page 35, 1 through 8, no objection; 9 through  
22 25, overruled.  
23 36, 1 through 25, overruled.  
24 37, 1 through 25, overruled.  
25 38, 1 and 2, overruled.

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1 Page 40, 22 through 25, overruled.  
2 41, 1 through 8, overruled.  
3 42, 11 through 24, overruled.  
4 43, 2 through 21, overruled.  
5 22 through 25, sustained.  
6 MR. HEIM: Well, Judge, could you give me  
7 that one? I'm trying to keep up with you.  
8 THE COURT: 43.  
9 MR. HEIM: 43.  
10 THE COURT: 2 through 21, overruled.  
11 22 through 25, sustained.  
12 MR. HEIM: Okay.  
13 THE COURT: And on 44, Line 1, sustained; 2  
14 and 3, overruled.  
15 Okay. 48. The problem with this is, again,  
16 it touches on this issue of health. Now, if you're  
17 asking specifically a person what you think about the  
18 health plans is one thing, that's really not  
19 advertising. But when you tie it in with the  
20 advertising, then you get into the problem of a  
21 preemption issue, and that's why I questioned it.  
22 On Line 13, for example, the question is:  
23 Why in the advertising is it so often stressed lower  
24 tar and nicotine?

25 They say -- the answer is: It's a taste

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1 claim.  
2 That's fine.  
3 Then it goes into the next problem: Does it  
4 appear in much of the advertising as a health claim?  
5 So you're raising the issue again.  
6 MR. ROSENBLATT: Yes. But that particular  
7 issue, you know, has been dealt with in other  
8 depositions. It's our position that that's part of the  
9 fraud as well, because they say, well, it's a consumer  
10 preference. And they know that's not true. They know  
11 the consumer has been conditioned to believe that lower  
12 tar, lower nicotine is somehow less dangerous.

13           It's got nothing to do with health, other  
14   than the fact that they say -- that they say it's got  
15   nothing to do with health. They just say that it's a  
16   taste preference and, you know, it's our position  
17   that's part of it.  
18           MR. HEIM: Plaintiffs take every issue and  
19   say it's part of the fraud. That's the way they try to  
20   get around some of these issues. But this plainly  
21   implicates advertising in terms of the health claim,  
22   and it's not proper to put this in front of the jury  
23   the way it is put in this deposition.  
24           THE COURT: I agreed with you. That's where  
25   my problem is. So I allowed 13, 14 and 15, okay,  
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1   because that doesn't relate to health. But then the  
2   question on 16 through 25, while the answer doesn't get  
3   into the health issue, the question does, and that's  
4   where the problem is.  
5           MR. ROSENBLATT: Couldn't she just continue  
6   her answer from 15 and then just go to 22, you know,  
7   without the question in between on Line 16?  
8           THE COURT: Yes.  
9           MR. HEIM: It doesn't solve the problem.  
10          THE COURT: No. It really does, because --  
11          MR. HEIM: Why?  
12          THE COURT: -- because the answer on 15 is  
13   it's a taste claim. Then, if you just jump down and go  
14   to 22, it says: I believe it's a taste claim. There  
15   are various taste levels within the cigarette that  
16   produce different tastes, and that's the same concept  
17   if you eliminate the question, 16 through 20 --  
18          MR. HEIM: I see what you're doing. Okay. I  
19   see what you're doing. You're taking out the question.  
20          THE COURT: Yes. Take the question out.  
21   Just leave the answer.  
22          And the next question on top of 49, 1, 2 and  
23   3, would be sustainable.  
24          Page 50, Lines 11 through 25 is unopposed.  
25          51, I left it in, I guess. I don't see any  
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1   real problem with it. Lines 15 through 19, overruled.  
2          55, 6 through 18, again advertising,  
3   overruled.  
4          Okay. Now we're getting into Benson &  
5   Hedges. Wasn't that a British --  
6          MR. HEIM: Benson & Hedges is a Philip Morris  
7   brand. It depends on the time period.  
8          THE COURT: Yes.  
9          MR. ROSENBLATT: It used to be like a  
10   separate company.  
11          MR. HEIM: Right. It was. Right.  
12          THE COURT: It was British at one time,  
13   wasn't it?  
14          MR. HEIM: Yes. I think it was either  
15   British or Canadian, I'm not sure.  
16          MR. ROSENBLATT: I think the advertising  
17   tried to convey that it was high class, but whether it  
18   was really British, I don't know.  
19          THE COURT: Anyway, I'll overrule the

20 objection on 60, Line 25; and 61, 1 through 25; and 62,  
21 1 through 25.  
22 Now, I see Mr. Chumbley is here.  
23 Do you want to stop and get into that other  
24 issue so we don't have to waste his time?  
25 MR. HEIM: Sure.

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1 MR. ROSENBLATT: I hate to waste  
2 Mr. Chumbley's time.  
3 THE COURT: He's been very good at it. He  
4 comes in, says a few words and leaves.  
5 MR. ROSENBLATT: Absolutely. Let's  
6 accommodate him.  
7 MR. CHUMBLEY: I refer to it as cameo  
8 appearances, Your Honor.  
9 I'm sorry. I thought Your Honor told me  
10 yesterday 9:15, so I apologize.  
11 THE COURT: No, no, no. No problem. I guess  
12 we changed all that late yesterday afternoon.  
13 Okay. What seems to be the problem? I  
14 thought that they had agreed orders on the discovery of  
15 these or production of these slides and things.  
16 MR. CHUMBLEY: This is what happened, Your  
17 Honor. We filed four motions for court orders allowing  
18 for the release of original pathology and cytology  
19 slides and blocks. These are four of the class  
20 representatives who signed authorizations, medical  
21 authorizations, and we presented those authorizations  
22 to various hospitals and facilities, and they came back  
23 and said, we'll give you everything, but we won't give  
24 you the cytology slides or the pathology slides without  
25 a court order.

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1 So we said, fine. That's not all that  
2 unusual. So we filed motions. And on two of the  
3 motions we attached orders. The motions did not  
4 indicate that they were agreed motions, but we attached  
5 orders for Your Honor's review.  
6 About a week ago yesterday, I wrote to  
7 Mr. Hoag at Stanley's office and said, please let us  
8 know if you have any objections to these motions.  
9 Actually, this was a week ago Monday, January 11th.  
10 Please let me know by the close of business on Tuesday,  
11 January 12, whether you have any objections. If so,  
12 we'll try to squeeze it in on Friday when the jury  
13 wasn't going to be here.  
14 I did not hear anything in the way of  
15 objections by the close of business Tuesday, so on  
16 Wednesday, I submitted agreed orders, because I assumed  
17 that they didn't have any objections.  
18 Thursday afternoon of last week, I got their  
19 written objections. So that's where we are.  
20 THE COURT: Okay. I thought I had signed a  
21 couple of those.  
22 MR. CHUMBLEY: You have in the past, Your  
23 Honor. And for some reason, Mr. Rosenblatt's office  
24 has now, I guess, changed their position on the release  
25 of original pathology.

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1 THE COURT: Let me tell you what the general  
2 procedure has been in cases that I have handled in  
3 which a situation like this came up. When you're  
4 talking about the gelatin block slides and tissue  
5 samples and things of that nature, either they re-slice  
6 and make new slides and new slices and, basically  
7 speaking, a couple of slices in from where it was isn't  
8 going to change things too much. Okay. So that's one  
9 solution.

10 MR. CHUMBLEY: It may change things.

11 THE COURT: It depends on what you're talking  
12 about. Generally speaking, it doesn't because they're  
13 microscopic. But if there's a possibility that it  
14 might, of course, that's a scientific matter which we  
15 have to get into.

16 That's one solution, to take new slide  
17 samples.

18 Number two is we already have slides, and we  
19 have the original block, I assume.

20 MR. CHUMBLEY: These health care facilities  
21 do, yes.

22 THE COURT: Yes, the hospitals.

23 MR. CHUMBLEY: They have them.

24 THE COURT: Now, what has happened in the  
25 past is the two sides have gotten together, experts on

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1 both sides, and have gone to whatever facility it was  
2 to examine them, so they were both there at the same  
3 time and one could see what one was doing. Okay. I've  
4 done that.

5 Then, by agreement, we have taken originals  
6 and sent them to other laboratories for one side or the  
7 other, but that was by agreement.

8 So, I can understand your position that you  
9 would like to get as much information as you possibly  
10 can, but is there really a difference between the  
11 slides that are already in existence and the  
12 possibility of getting new slides?

13 MR. CHUMBLEY: Let me tell you -- let me tell  
14 you why it's our position, Your Honor, the re-cuts --  
15 in other words, what you indicated as making new slides  
16 from what's already there, what the problem with  
17 re-cuts is, first and foremost, I believe that the  
18 defendants are entitled to be looking at exactly the  
19 same thing that the class representatives' treaters and  
20 diagnosticians, if you will, pathologists, were looking  
21 at when those people make the diagnosis and when the  
22 determination was made as to a course of treatment.

23 If we just look at re-cuts, all right, we may  
24 get a re-cut that doesn't include the part of the slide  
25 that the pathologist or the oncologist or whomever was

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1 looking at when he or she made the diagnosis or when he  
2 or she made a decision with regard to course of  
3 treatment.

4 Similarly, even if we were to get a re-cut  
5 that included the tumor, if you will, there may be --

6 there may be stuff on the slide that's away from the  
7 tumor that the defendants believe or contend would be  
8 important, significant, which for one reason or  
9 another, the diagnostician or the pathologist, when  
10 looking at the slides, didn't pay any attention to,  
11 either inadvertently or didn't think it was significant  
12 or just was concentrating on the tumor.

13 So, it's important, I believe, for the  
14 defendants to be able to look at exactly what it was  
15 that these people were looking at when they made the  
16 diagnosis and when they made the course of treatment.

17 We have taken possession of these before, and  
18 Mr. Rosenblatt's office at one time wrote us a letter  
19 saying you've got Mrs. -- I think it was Mrs. Della  
20 Vecchia's pathology. Mrs. Della Vecchia's doctor tells  
21 me that they need to have those back for a particular  
22 purpose.

23 We got those pathology -- all of the  
24 pathology back to Mrs. Della Vecchia's doctor within 48  
25 hours. If they need it back, we give it back.

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1 But we believe that the defendants are  
2 entitled to look at exactly what the treaters were  
3 looking at and we need to show it to people.

4 THE COURT: Okay. Assuming your side of it,  
5 then, the hospital is in City X and you're in City Y  
6 and you want them to send it however they do it, parcel  
7 post, mail, whatever --

8 MR. CHUMBLEY: What we do, Your Honor, quite  
9 frankly, is we send an agent to pick it up.

10 THE COURT: Physically?

11 MR. CHUMBLEY: Physically pick it up.

12 THE COURT: Okay.

13 MR. CHUMBLEY: That's the way we've done it  
14 in the past. And with Mrs. Del Vecchia --

15 THE COURT: Let me ask you another thing.  
16 I'm not familiar with the procedure.

17 Once you get a slide, is it possible to  
18 duplicate that slide?

19 MR. CHUMBLEY: I don't believe so, Your  
20 Honor.

21 THE COURT: In other words, take photographs  
22 of it or whatever?

23 MR. CHUMBLEY: I don't believe so. Once we  
24 get the slides, what we do is we have people look at it  
25 precisely the way that a pathologist would look at it

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1 when the biopsy is done.

2 THE COURT: Yes, but with micro-photography,  
3 wouldn't you be able to put it in a machine?

4 MR. CHUMBLEY: I don't believe so.

5 THE COURT: They do it all of the time.

6 MR. CHUMBLEY: I don't believe so, but even  
7 if we were able to do that, we would have to have it in  
8 the first instance.

9 THE COURT: Your side would have the  
10 opportunity to take photographs of the original after  
11 you've looked at it.

12 MR. CHUMBLEY: I think what you'll find, I've



13 found over the years, Your Honor, is that pathologists  
14 like to look at the slides. They're used to looking at  
15 slides.

16 THE COURT: Of course.

17 Now, what is the main objection for the  
18 defense to then getting these slides?

19 MR. ROSENBLATT: You know, it's a very  
20 practical problem. And, you know, we didn't pay much  
21 attention to this. It seemed they just wanted more  
22 records, initially, and then it was brought to my  
23 attention that, you know, some of the doctors or  
24 hospitals get very, very upset when the originals are  
25 removed.

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1 And they said, this is -- this is craziness  
2 because we can -- we never had a case -- no one -- no  
3 one in a pathology lab ever heard of in a lawsuit that  
4 they weren't satisfied with the re-cuts. They said  
5 that scientifically, it's essentially the same thing.  
6 I don't have the expertise to know that, but I do  
7 know -- the whole issue has to do with the originals.

8 THE COURT: I'll tell you what. Let's look  
9 at it this way.

10 There's two interests involved here that  
11 we've been talking about. Well, actually, three.  
12 We're not talking about the defense at this point.  
13 We're talking about the hospital's interest and the  
14 original slides.

15 Assuming that the hospital may need them for  
16 future --

17 MR. ROSENBLATT: Treatment.

18 THE COURT: -- in the diagnosis or treatment.

19 MR. ROSENBLATT: Right.

20 THE COURT: And without them, they would be  
21 in trouble, much like the missing X-ray. That's a  
22 problem for the hospital.

23 The legal problem that we get into is if you  
24 take the original from the hospital and take them  
25 someplace else, the possibility of them getting lost

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1 either in transit, to and from, if that is what the  
2 main problem is, that could be resolved in this regard.  
3 An agreement can be reached that if the defense takes  
4 the slides, whatever it may be, and loses them, then  
5 they're precluded from ever attacking that particular  
6 issue in a lawsuit.

7 Okay.

8 MR. CHUMBLEY: Obviously, the defendants, if  
9 they have possession of the original pathology, the  
10 original pathology and cytology, if they have  
11 possession of it and the defendants lose it, they have  
12 a problem. I understand that.

13 THE COURT: I'm saying that can be resolved  
14 with an agreement. Okay. And if that is one of the  
15 issues.

16 But if it's really a medical issue, I can  
17 understand the hospital's reluctance to give up the  
18 slides, saying we may need them. The answer to that is  
19 then you take your guy and you take them to the

20 pathology lab of whatever hospital it is and he looks  
21 at them there. I don't have any problem with that.  
22 MR. CHUMBLEY: Well, Your Honor, that makes  
23 it kind of cumbersome.  
24 THE COURT: What's cumbersome? You've got to  
25 send somebody there to pick them up in the first place  
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1 and then somebody to bring them back, as compared to,  
2 say, take your expert and send them down there and let  
3 them use their lab to look at them. In that regard, we  
4 can send both experts there at the same time.

5 MR. CHUMBLEY: There are issues, you know,  
6 with regard to, you know, availability and all of that.

7 If we have -- if we have the originals, then  
8 we can show them to people in their office, and they  
9 can examine it at their leisure as opposed to sitting  
10 in a hospital facility and being rushed and using  
11 equipment, perhaps, that is not the equipment they  
12 would like to use, that they have better equipment that  
13 they would like to look at the slides with at their own  
14 facility or their own office. These are issues that  
15 arise.

16 If the problem is we lost them, we haven't  
17 lost them in the past. When Mrs. Della Vecchia told  
18 Mr. Rosenblatt we need them back, we had them back  
19 within 48 hours.

20 THE COURT: I've had cases, believe it or  
21 not, which the X-rays disappeared from the time they  
22 left the hospital until the time they got to the  
23 defense attorney's hospital and then back before it got  
24 to court for production, they were lost somewhere in  
25 the middle. It's an issue in the case. I don't know

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1 if it's going to be that critical.

2 MS. LUTHER: Judge, can I just interject for  
3 a second on a totally -- representing SmithKline's  
4 behalf, which I know is one of the entities you're  
5 trying to get originals from, my firm is regional  
6 counsel for them in the State of Florida. They will  
7 not allow an expert to come and use their facilities.

8 We -- we traditionally hand over the original  
9 slides, with a receipt, saying you have to return them  
10 to us within a date certain.

11 THE COURT: Well --

12 MS. LUTHER: And there's always the option of  
13 a spoliation case.

14 THE COURT: You always run into some of these  
15 problems sooner or later.

16 It isn't really that big a deal, frankly.

17 MR. CHUMBLEY: I tend to agree, Your Honor.  
18 The simple fact of the matter is that this material  
19 is --

20 THE COURT: Let me ask you a question. You  
21 want the original slides. You don't need the blocks.

22 MR. CHUMBLEY: We need the blocks, too.

23 THE COURT: I know it says block, but do you  
24 really need the block?

25 MR. CHUMBLEY: Our motion is very specific.  
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1 If I can hand up one copy, which is a representative  
2 motion, this is relating to Mr. Amodeo.

3 Thank you.

4 If you look on the second page of the motion,  
5 we're very specific in terms of what we're asking.

6 THE COURT: Slides and blocks including those  
7 bearing the numbers. You give a whole bunch of  
8 numbers. I don't know if these are slides or blocks.

9 MR. CHUMBLEY: Could be a combination of  
10 both, Your Honor.

11 We're very specific. And as Ms. Luther  
12 indicates, even with a court order, these facilities  
13 make very sure, in no uncertain terms, that they know  
14 who has it and that they know when it's supposed to be  
15 back.

16 THE COURT: Well, I really basically don't  
17 have any, you know, objection to it. I just want to  
18 make sure that whatever happens, that if by some chance  
19 they get misplaced or whatever, the onus and the burden  
20 is going to be on the defense. And I'm going to  
21 preclude you from making any allegation whatsoever that  
22 these slides have whatever meaning or opposite meaning  
23 that you think or can use them or attack them in any  
24 fashion. I mean, that's going to be the condition if  
25 you get them. Okay.

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1 MR. CHUMBLEY: So I guess, Your Honor, to the  
2 back of that motion you'll find one of the orders that  
3 you've signed before I realized that the --

4 THE COURT: Right.

5 MR. CHUMBLEY: -- plaintiff --

6 THE COURT: I'll just re-sign that.

7 MR. CHUMBLEY: Do you want us to change that  
8 in any way?

9 THE COURT: I need an amended order. So what  
10 we'll do is we'll just vacate this order and send in  
11 original orders.

12 MR. CHUMBLEY: I'll draft one.

13 THE COURT: I don't know if these, what you  
14 called agreed orders --

15 MR. CHUMBLEY: If Your Honor hasn't signed  
16 them, I guess you ought not to.

17 THE COURT: No, I haven't. But they don't  
18 have the numbers and all that.

19 MR. CHUMBLEY: No, they don't. The agreed  
20 orders are identical to the one you signed with the  
21 exception that it doesn't say agreed on it. So what  
22 we'll do is we'll vacate the January 11 order, and  
23 we'll draft up a new one for you to sign.

24 THE COURT: Yes. And put in there pursuant  
25 to hearing, so we know we had a hearing.

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1 MR. CHUMBLEY: Right.

2 THE COURT: And the caveat as to  
3 responsibility if they're mislaid.

4 MR. ROSENBLATT: We would -- you'll probably  
5 agree to this, but we would like -- this is a very

6 sensitive, you know, area, and there are -- there's  
7 possibilities for, you know -- I'm not making any  
8 charges, but there's possibilities for alterations and  
9 stuff like that.

10 All I want to do, in view of Your Honor's  
11 ruling, is to get notice when you're going to send an  
12 agent to pick up the originals so that we have the  
13 option of sending someone over there or talking to the  
14 person and finding out, okay, now, you know, let's have  
15 a detailed receipt, exactly -- we may want to take a  
16 picture.

17 THE COURT: That's fine. I have no problem.  
18 I think you're entitled to be there and entitled to  
19 look at what's turned over.

20 MR. ROSENBLATT: Give us reasonable notice as  
21 to when you're sending your person.

22 THE COURT: Now, you said something to be  
23 returned within reasonable time.

24 MR. CHUMBLEY: Right.

25 THE COURT: You know how lawyers look at  
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1 reasonable time or the word reasonable.

2 MR. CHUMBLEY: It depends, because what we  
3 have to do once we get the slides and the blocks is we  
4 have to arrange for our consultants to have time to  
5 look --

6 THE COURT: What time are you talking about?  
7 I hate to interrupt like this. If you're talking 30  
8 days, 45 days or two weeks or whatever it is that you  
9 really think --

10 MR. CHUMBLEY: You know, I don't know the  
11 time frame, Your Honor, but I would assume that it  
12 would be at least 60 days.

13 THE COURT: 60 days.

14 MR. CHUMBLEY: At least. I can find out.

15 THE COURT: Let's do it this way. Let's look  
16 at it -- put a 45-day limit which can be extended upon  
17 motion.

18 MR. CHUMBLEY: Okay.

19 THE COURT: That way we'll have something  
20 definitive by time.

21 MR. CHUMBLEY: Understood.

22 THE COURT: All right.

23 MR. CHUMBLEY: One other matter, Your Honor,  
24 and then I'll finish this cameo appearance.  
25 Reynolds filed a Request for Production to  
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1 the plaintiff in this matter. I have a copy for the  
2 Court. This is a --

3 THE COURT: Let me give this back to you,  
4 Mr. Chumbley, so I don't get confused.

5 MR. CHUMBLEY: This is a very simple Request  
6 for Production. It merely asks for the plaintiffs to  
7 provide copies of CVs for certain of their Phase II  
8 experts.

9 Mr. Rosenblatt, before the Christmas break,  
10 indicated with regard to class representatives, he  
11 named three of them that he would like to try first in  
12 Phase II. And on November 20, he answered

13 interrogatories listing the expert witnesses he intends  
14 to call in the Phase II trial of those people.

15 We're asking for CVs, resumes, and we're  
16 asking for a motion to shorten time for them to provide  
17 that. It's relatively straightforward, not very  
18 burdensome, not burdensome at all, and we believe the  
19 plaintiffs should be able to produce those within 15  
20 days.

21 MR. ROSENBLATT: We'd like a longer period of  
22 time. I don't --

23 MR. CHUMBLEY: It seems to me, Your Honor,  
24 this requires a phone call saying, fax me your CV. I  
25 don't know why they would need 30 days to do that.

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1 THE COURT: For those they already know  
2 they're going to use.

3 MR. CHUMBLEY: Well, these -- we referenced  
4 in our motion and in our Request for Production that  
5 we're asking for the CV of each expert listed in  
6 Paragraphs 9, 11 and 15 of their interrogatories.  
7 These are people that they've already indicated they  
8 intend to use as experts in Phase II.

9 THE COURT: Well, as long as that's listed,  
10 then there's no reason why you can't get it done.

11 All right. Let's do that, again, with the  
12 caveat if you run into a problem on the time.

13 MR. ROSENBLATT: Okay.

14 THE COURT: 15 days.

15 Okay. I have another motion here from  
16 Mr. Geraghty, release of records produced under seal.

17 MR. MOSS: I'm sorry, Your Honor. I was --

18 THE COURT: I know you were looking. Your  
19 name wasn't --

20 MR. MOSS: Let me read what you said.

21 THE COURT: It's a B&W document.

22 Mr. Geraghty, I guess that's how you pronounce it,  
23 filed January 7: Please find enclosed Brown &  
24 Williamson motion for records sealed under order in  
25 response to our subpoena duces tecum for records

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1 regarding plaintiff, Raymond Lacey. The medical  
2 provider filed subpoena records under seal with the  
3 clerk's office. Motion seeks release of those records  
4 for purpose of Phase II discovery.

5 MR. MOSS: Yes, sir.

6 THE COURT: So forth and so on.

7 MR. MOSS: I know a little bit about it.

8 THE COURT: Well, that's what it is.

9 MR. MOSS: But that's self-explanatory. They  
10 responded to the subpoena, oddly, by saying we're not  
11 going to give -- we'll give it to the Court under seal.  
12 All we're asking for is that the Court unseal it so we  
13 could get the documents.

14 Did we present you with an order?

15 THE COURT: I have an order here, yes. I  
16 just --

17 MR. ROSENBLATT: It has been sent to the  
18 Court already?

19 THE COURT: Apparently.

20 MR. ROSENBLATT: As I understand it.  
21 MR. MOSS: That's what it says.  
22 THE COURT: It says: In response to our  
23 subpoena duces tecum for records, the medical provider  
24 filed the subpoenaed records under seal with the  
25 clerk's office.

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1 I'll have Olga check it. If she's got it;  
2 release it.  
3 MR. MOSS: Thank you, sir.  
4 THE COURT: The only problem I have with it  
5 is the form of the order. It's got a done and ordered  
6 page on the second page.  
7 MR. MOSS: I will get you another one.  
8 THE COURT: I've got a stamp that cures all  
9 that.  
10 So I'll take care of that.  
11 Hold on to that. Put that on my desk for  
12 signature.  
13 Okay. That takes care of that.  
14 Now, back to --  
15 MR. ROSENBLATT: Back to Merlo.  
16 THE COURT: Merlo. Okay.  
17 Mr. Chumbley, if you feel like you have to go  
18 back to the office, that's fine. If not, you want to  
19 earn your bucks, you can sit.  
20 MR. CHUMBLEY: I'm comfortable, Judge. Thank  
21 you.  
22 THE COURT: It's always a pleasure having  
23 you.  
24 Page 64, Line 11 through 25 -- Page 64, Lines  
25 11 through 25, overruled.

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1 And 65, 1 through 8, overruled; and 20  
2 through 25, overruled.  
3 66, 1 through 25, overruled.  
4 Page 67, 1 through 5, overruled.  
5 72, 8 through 19, no opposition.  
6 73, 11 through 25, overruled.  
7 1 through 7, overruled on Page 74.  
8 And 23 through 25 on 74, overruled.  
9 Page 75, 1 through 8, overruled.  
10 Okay. 79, 4 through 25, overruled.  
11 80, 1 through 25, overruled.  
12 81, 1 through 5, overruled.  
13 92, 6 through 25, overruled.  
14 93, 1 through 25, overruled.  
15 94, 1 through 25, overruled.  
16 95, 19 through 23, sustained; and 24, 25, I  
17 sustained -- let's see. There's a little confusion  
18 here.  
19 Okay. We get into a real hairy argument  
20 here, so let's sustain 19 through 25 on Page 95; Line 1  
21 on 96; Lines 8 through 13 on 96.  
22 Now you're talking about something else,  
23 avoiding a legally mandated warning.  
24 If I look at 97, we're skirting around on  
25 this issue. Your objection is?

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1 MR. HEIM: My objection is preemption and  
2 speculative. There's an implication that the warnings  
3 aren't sufficient by the way the question is asked, and  
4 the next question after that, it just calls for  
5 speculation. Would you? If?

6 And she says -- in fact, she says -- well,  
7 she picks up on her lawyer's objection, but she says:  
8 It's speculative. I don't know.

9 How would she know?

10 THE COURT: See, the problem we get into here  
11 on this preemption issue is the phrase in Cipollone  
12 regarding advertising, all forms of. Walking around  
13 with a T-shirt with a logo on it is a form of  
14 advertising.

15 MR. HEIM: Actually, it says advertising or  
16 promotion in the statute.

17 THE COURT: Well, forms of advertising. So,  
18 what's advertising? T-shirt. That type of thing.

19 Most people think of advertising and  
20 promotion as the written page in a magazine or  
21 something, promotion of that type.

22 So I marked it all out. So 96 is out; 97,  
23 Lines 3 through 14.

24 98, 5 through 20, overruled.

25 MR. HEIM: Your Honor, may I be heard

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1 briefly --

2 THE COURT: Let's see. 5 through 17. Excuse  
3 me. Because there's another question on 18.

4 Okay. Go ahead.

5 MR. HEIM: What I was going to say, Your  
6 Honor, is this section from 98 basically on to 112 is  
7 simply arguing with a witness who is a merchandising  
8 and promotion type person working in the merchandising  
9 area and corporate affairs area on the science of  
10 smoking, and I think it's there simply to argue that.

11 It's repetitious. It's cumulative. It's  
12 argumentative. And it's asking questions of somebody  
13 who doesn't have a foundation or a basis to answer  
14 them.

15 THE COURT: Well, we're not asking in this,  
16 from what I can see, the scientific information. I  
17 think the thrust of the question, basically, is if  
18 you're in the area of marketing and all of that, you're  
19 supposed to know what warnings are on the labels. And  
20 the question was: What does the warning say about  
21 cancer on your package of cigarettes?

22 The answer: There are several warnings.

23 Question: There's only one warning that  
24 talks about cancer; isn't there?

25 The answer is: May cause.

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1 So, in that regard, if you're talking about  
2 somebody in marketing and advertising --

3 MR. HEIM: But the warning --

4 THE COURT: I think it's within their realm  
5 of knowledge as to what the warning is on their

6 product.  
7 MR. HEIM: But the warnings are what the  
8 warnings are.  
9 MR. ROSENBLATT: Yes. But the knowledge of  
10 someone as high up as Ellen Merlo -- she's been with  
11 Philip Morris like 25 years and occupies a very high  
12 position, and the knowledge --  
13 MR. HEIM: What difference does it make? How  
14 is it relevant to any claim in this case?  
15 Then it goes on from there and argues: Can  
16 you name one doctor, one -- it's more of the --  
17 THE COURT: Well, we haven't got to that  
18 part, yes.  
19 MR. HEIM: All right.  
20 THE COURT: That series of questions on 98 is  
21 really testing their knowledge as to what the warnings  
22 are, and that's not a problem.  
23 MR. HEIM: Down to Line 17.  
24 THE COURT: Yes. Then you get into: What  
25 have you done to educate yourself on whether they're  
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1 accurate? Now we're getting into another area, okay.  
2 Now we're getting into sufficiency, and by  
3 implication, an attack on the effect of the warnings.  
4 So that's why I cut it off at 17. Actually 15.  
5 Actually 15.  
6 So, I allowed 5 through 15 and disallowed 16  
7 through 20 on 98.  
8 But then we get into the esoteric areas we're  
9 talking about. This again goes along with the general  
10 theme that counsel has been raising regarding what  
11 information did they know about their product.  
12 MR. HEIM: But here he's personalizing it as  
13 to her, who is a marketing person, asking questions,  
14 some of which contain hearsay in the questions and  
15 getting that kind of question in front of jury, and  
16 she's not a person who -- it's not within her realm.  
17 And it's certainly cumulative and  
18 repetitious, in addition to being argumentative.  
19 MR. ROSENBLATT: The most critical question  
20 to the people that buy Philip Morris products. She's  
21 in marketing. She's got to have a basic knowledge, or  
22 she doesn't, but the jury is entitled to know what  
23 someone in this position knows, and all they know is  
24 the party line: Causation hasn't been proven. They're  
25 ignorant, either deliberately or not deliberately, of  
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1 any of the science whatsoever.  
2 All they can do is repeat the party line.  
3 And that's what LeBow said of the -- that's what a CEO  
4 of one of the defendants said. He said, yes, the  
5 reason I said that at my first deposition, my lawyer  
6 told me, this is the party line; we know from nothing.  
7 MR. HEIM: Well, I don't know what LeBow said  
8 or didn't say.  
9 MR. ROSENBLATT: Sure you do. You were here.  
10 MR. HEIM: No, I don't. I was here and I  
11 cross examined him, and I still don't know what he said  
12 or didn't say. That's not the point.



13           The point is, these are not proper questions  
14 of this witness, in addition to the fact that they  
15 contain hearsay, and they're argumentative questions.  
16           I mean, how is she going to answer a  
17 question, can you name one doctor or medical specialist  
18 who agrees -- who disagrees with the Surgeon General?  
19 That's not a fair question to ask the witness.  
20           MR. ROSENBLATT: How can she answer that? I  
21 read a document, a Philip Morris document, we got  
22 Dr. Joe Blow at Stanford who says the Surgeon General  
23 is wrong. That's how she can answer.  
24           MR. HEIM: Well, she's a marketing person in  
25 the first instance. And the question assumes a number  
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1 of things that she wouldn't have any idea about. It's  
2 pure argument.  
3           THE COURT: Okay. I'm on 99 now. I'll  
4 overrule the objections to Lines 1 through 5. Sustain  
5 it as to 6 through 12 -- 6 through 16, actually.  
6           I overruled 17 through 25.  
7           Then I get into the area: Did you ever  
8 inquire at Philip Morris? And she says she has  
9 discussed it.  
10           So, down through 19, overruled; 20 through  
11 25, sustained.  
12           101, 3 through 7, sustained.  
13           All right. Page 102, Lines 17 through 25,  
14 sustained.  
15           103, Lines 1 and 4, sustained.  
16           10 is sustained.  
17           The question is a baiting question on 103,  
18 Line 11.  
19           MR. HEIM: It sure is.  
20           THE COURT: But her answer is regarding the  
21 fact that it's all epidemiology, and she may disagree  
22 with their conclusions.  
23           MR. HEIM: Yes, but the question is so  
24 argumentative. It talks about the ploy by Philip  
25 Morris or making big money. It is a baiting question.  
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1           THE COURT: The rest of it becomes  
2 repetitious anyway, since we've already gone through  
3 this.  
4           MR. HEIM: All right.  
5           THE COURT: She didn't talk to anybody about  
6 it.  
7           MR. ROSENBLATT: Yes. But although she  
8 professes -- she professes ignorance on the science,  
9 her answer on 103 is the absolute standard party line,  
10 which is the fraud.  
11           MR. HEIM: It's cumulative.  
12           MR. ROSENBLATT: She knows that -- she knows  
13 that's untrue, and she says it because that's her  
14 answer.  
15           THE COURT: Here's what we'll do. Question  
16 11, Page 103, question on Line 11, take 11 and 12 up to  
17 the word proven, and allow those -- that phrase, and  
18 her answer on 22 through 25, eliminating the bulk of  
19 the body of the question starting on Line 11.

20 So, the allowable question is: And so on  
21 what basis are you saying that it hasn't been  
22 scientifically proven? You drop down to the answer on  
23 Line 22. And the top of 104, Line 1.  
24 Okay. The rest of it I kept out, 2 through  
25 18, on 104.

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1 19 through 25 is another repetitious  
2 question, sustained.  
3 105, Line 1 and 2, sustained.  
4 And we're back to the warnings.  
5 Well, there's a colloquy here about what  
6 actually did the warnings say.  
7 Okay. The question on Lines 3 through 10 is  
8 overruled. And the rest is repetitious, Lines 11  
9 through 24. Line 25 is sustained.  
10 Through Page 106 -- I guess that was an area,  
11 Line 25.  
12 I sustained the objections from Page 106,  
13 Lines 10 through 25.  
14 107, sustained up through Line 1 through 13.  
15 There's a new question on 14. 14 through 25  
16 is overruled.  
17 108, overruled, through 19.  
18 Line 20, he talks about the Wall Street  
19 Journal again. That's the problem.  
20 I sustained the objection from 20 to 25 on  
21 Line 108. And Lines 1 through 6 on 109 also.  
22 Lines 7 through the bottom of the page,  
23 sustained.  
24 Page 110, sustain the objection, Line 1 and  
25 Lines 4 through 25.

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1 Sustain the objection on Page 111, Lines 5  
2 through 6 and 21 through 25.  
3 And we go back to the same old esoteric  
4 questions. Line 1 through 9, sustained.  
5 Line 13, sustained.  
6 14 through 20, overruled.  
7 Page 115, 7 through 20, overruled; 21 through  
8 25, sustained.  
9 Page 116, 1 through 7, sustained.  
10 8 through 25, no objection.  
11 Page 117, 1 through 22, no objection.  
12 Again, there's squiggle lines. I don't know  
13 what that means, but if you want to read them, that's  
14 okay.  
15 Page 119, 6 through 25, no objection.  
16 Page 120, 1 through 7, no objection.  
17 121, 4 and 5, no objection. 18 through 25,  
18 no objection.  
19 122, overrule the objection on 6, 7 and 8.  
20 And there's no objection to 9 through 14.  
21 123, Lines 1 through 5, sustained.  
22 THE COURT: Let me mark this, and we can pick  
23 this up after the jury comes in. I'd like to have the  
24 jury start doing something. So we're on Page 123.  
25 MR. HEIM: Right.

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1 THE COURT: And we'll pick it up.  
2 MR. REID: I don't think the jury is coming  
3 until ten.  
4 THE COURT: Excuse me. Did I say ten?  
5 MR. ROSENBLATT: Yes. You said ten, Judge.  
6 MR. HEIM: Your Honor, we ought to discuss  
7 this matter before the jury comes in.  
8 THE COURT: Let's take a few minutes to talk  
9 with them about it.  
10 (Recess)  
11 THE COURT: I took the front page of the  
12 Herald just so we could review it.  
13 MR. HEIM: Your Honor, as you know, because I  
14 mentioned it a moment -- a few minutes earlier this  
15 morning, we have a substantial concern about the jury  
16 as a result of the President's State of the Union  
17 Address last night and comments that he made over  
18 national television that was covered by all of the  
19 major networks and reported in the newspaper today.  
20 The New York Times has in it the -- what I  
21 believe is the press release text of the President's  
22 State of the Union Address to Congress. This is dated  
23 Wednesday, January 20th, today's date, and it recites  
24 as follows, and I'm quoting from Page A-22 of the New  
25 York Times:

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1 As everyone knows, our children are targets  
2 of a massive media campaign to hook them on cigarettes.  
3 I ask this Congress to resist the tobacco lobby.  
4 Together let's reaffirm the FDA's authority to protect  
5 children from tobacco. Hold the tobacco companies  
6 accountable and protect tobacco farmers.  
7 I believe that the President also added  
8 extemporaneously last night, in fact, I know that he  
9 did, because I was watching the speech, that the  
10 government, by way of the Justice Department, was in  
11 the process of preparing a lawsuit against the tobacco  
12 companies, and the President added that whatever they  
13 recovered from the tobacco companies through that  
14 lawsuit would be used -- and I'm not entirely sure that  
15 I've got this part of it right, but I think I am --  
16 would be used to help pay for Medicare costs in the  
17 future and for solving the problems that the Federal  
18 government has with the Medicare system.  
19 In addition to the New York Times account and  
20 what the President said orally on television last  
21 night, the Miami Herald reported on the front page  
22 today that, and I quote, Clinton also announced that  
23 the Justice Department will sue the tobacco industry to  
24 recover billions of dollars in health care costs spent  
25 on smokers. Clinton also is seeking a 55 cent a pack

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1 tax on cigarettes to finance much of his proposed new  
2 spending.  
3 THE COURT: Which edition?  
4 MR. HEIM: Your Honor, I have the Miami  
5 Herald, final edition, taken today.

6 THE COURT: The one I have is a Broward  
7 edition. I was looking for something in it, and the  
8 only thing I saw in the Herald itself was in the  
9 editorial section, a brief reference. Let me see if  
10 it's on the same page.  
11 No. They didn't carry it. Okay.  
12 MR. HEIM: Your Honor --  
13 THE COURT: Yes. This was the one I was  
14 looking for because I had read that this morning.  
15 MR. HEIM: Right. And I had picked it up  
16 this morning on the way in and picked up the Times on  
17 the way in, as well.  
18 THE COURT: Yes. The Broward paper is no  
19 good.  
20 MR. HEIM: Your Honor, the question is with  
21 some 60 million people having watched the speech last  
22 night and heard the President makes these comments,  
23 with your -- we need to consider what the right thing  
24 to do with this jury is, in view of Your Honor's  
25 frequent exhortation to the jury that they decide this  
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1 case based on the evidence in the courtroom.  
2 And I believe the matter is of such import  
3 that Your Honor ought to do the following. My proposal  
4 to Your Honor is that you would proceed as follows.  
5 I suggest, Your Honor, that you -- when you  
6 bring the panel in, since you frequently say to them,  
7 have you heard anything or has anything happened over  
8 the course of the weekend or the evening, it would not  
9 be all that much different for the Court to say to this  
10 panel, how many of you watched the President's State of  
11 the Union address last night and to ask them to raise  
12 their hand if they did. And then take note of the  
13 jurors' numbers.  
14 Your Honor could then ask, how many of you,  
15 even if you didn't watch the President's State of the  
16 Union address, saw or heard radio or television reports  
17 about the President's speech or read about it in the  
18 news today?  
19 I say that because I also watched CNN this  
20 morning, and they reported on the tobacco part of his  
21 speech last night.  
22 It may be that we'll find that probably, to  
23 our surprise, if it happens, that no hands get raised.  
24 But if people do raise their hands, then I think those  
25 jurors ought to be separated from the other jurors and  
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1 Your Honor should inquire individually of those jurors  
2 if they -- one by one, whether they recall what the  
3 President said in the first place or what they read  
4 about what the President said, and whether, in all  
5 honesty, since they've sworn to tell us the truth,  
6 whether they think anything the President said would  
7 have any influence on their consideration of the  
8 evidence or their deliberations when it comes to a  
9 verdict.  
10 And we would then -- we would then have to  
11 see where we are at that point. But I think it's of  
12 sufficient concern that we would ask Your Honor to do

13 that.

14 MR. ROSENBLATT: Let's put this into  
15 perspective. If we were getting agitated and excited  
16 every time some big shot or prominent figure makes an  
17 antitobacco statement, this kind of motion would be  
18 made every day. Obviously the State of the Union is in  
19 a special category and a tremendous amount of people  
20 watched it.

21 Putting it in perspective, we take witness  
22 after witness, and we really, I think, sometimes lose  
23 sight of the fact of the uniqueness of this case. For  
24 example, one of the most fundamental rules in  
25 courtrooms was violated constantly by the defense.

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1 They had their reasons, and it was fine, during LeBow's  
2 testimony.

3 If Your Honor remembers, they explicitly  
4 discussed his settlement agreements with the Attorney  
5 Generals. Of course, their reason for that was to try  
6 to demonstrate to the jury his motivation.

7 Now, if we look at this thing realistically,  
8 the tobacco issues, tobacco and health have been very,  
9 very controversial subjects in this country for several  
10 years now. I think realistically we know, and  
11 certainly we're in a better position than almost anyone  
12 else to know or to have an idea as to what the average  
13 person knows by virtue of going through about a  
14 thousand questionnaires during the very lengthy jury  
15 selection process.

16 I think it's fair to say, Judge, the average  
17 person does not know the details as to litigation  
18 with -- in the tobacco field. But I think just about  
19 everybody knows, in a general way, the tobacco  
20 companies have settled cases, they have settled cases  
21 for multiple billions of dollars, and they have settled  
22 cases with the Attorney Generals of the various states.  
23 I think most people, you know, know that.

24 So in that context, what Clinton said last  
25 night, big deal. Now, nothing was more predictable

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1 than that this kind of thing would occur. Nothing was  
2 really more predictable but that President Clinton  
3 would make an antitobacco statement, considering his  
4 past record in his State of the Union addresses. And  
5 if they were so worried about it, they should have  
6 moved to sequester the jury, which they never did.

7 And basically, if you would -- if you would  
8 extend their position to its logical conclusion, they  
9 would be totally insulated from lawsuits, because  
10 something is said all of the time. Something is said  
11 constantly.

12 We started jury selection in July. We  
13 started selecting -- we started putting on evidence in  
14 October.

15 Not everything can be elevated to a cause  
16 celeb. This is not a cause celeb. Clinton has made  
17 statements like this many, many times. Many democrats  
18 have made statements.

19 If Your Honor remembers, during many of the

20 settlements by the Attorney Generals, which got very,  
21 very wide coverage, both attorney -- Attorney Generals  
22 and governors -- Governor Chiles, for example, made far  
23 stronger antitobacco statements since this trial has  
24 been in progress.

25 And if you want to talk about something, you  
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1 know, outrageous, during the trial, the tobacco  
2 industry, Philip Morris has started a hundred million  
3 dollar advertising campaign to disprove the obvious,  
4 that they replenish smokers who die and quit with  
5 youths.

6 So, Your Honor is -- I think, to be  
7 consistent with what Your Honor has done in the past, I  
8 would suggest that Your Honor simply asks, you know,  
9 the standard question that you ask all of the time.  
10 And there is no need to specify the State of the Union,  
11 you know, message.

12 And to do what Mr. Heim suggests, we're  
13 looking for problems where none exist. Where none  
14 exist? There's nothing new in what President Clinton  
15 said. There has been talk and speculation. Well, the  
16 state's got all this government; what about the Federal  
17 Government?

18 And like I say, there is simply no reason to  
19 elevate this to a cause celeb. And if you do it in a  
20 different fashion and then you get hands and then you  
21 take jurors separately out, it will -- it will elevate  
22 it to a cause celeb in the minds of jurors, and there's  
23 really no reason to do that. We're opposed to it.

24 THE COURT: Well, the problem is, if one says  
25 how many watched and you've got to get into whether or  
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1 not they heard anything about tobacco-related issues,  
2 and assuming someone would raise their hand and say,  
3 yes, I did, we don't know what they heard, we don't  
4 know how it affected them. It's a little different  
5 situation than just the average, ordinary situation in  
6 the newspaper that comes up because somebody said  
7 something.

8 MR. HEIM: Your Honor --

9 THE COURT: I'm not even sure that what he  
10 said was the actual quote that was in the New York  
11 Times. That was a press release.

12 MR. ROSENBLATT: He did a lot of ad-libbing,  
13 apparently.

14 THE COURT: He always does. I didn't listen  
15 to it. I don't know what was said.

16 MR. HEIM: Well, I did -- I listened to it,  
17 and the notes that I made, and I didn't make them as he  
18 was speaking, but I walked over and made them shortly  
19 thereafter. Actually, I got a telephone call from  
20 another lawyer who -- and I talked to him about what  
21 the President had said, and the notes that I made are  
22 pretty consistent with what appears in the paper.

23 THE COURT: Well, I'll tell you what I'm  
24 concerned about. Under ordinary circumstances, they're  
25 going to raise taxes on tobacco. That's old news.

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1 We're going to seek money from the tobacco industry.  
2 Basically it's old news. We might even file a lawsuit.  
3 That's basically old news.

4 But if what he says was quoted accurately as  
5 an actual quote or a facsimile thereof, regarding youth  
6 and the characteristics of the speech there, I would be  
7 somewhat concerned about that.

8 MR. HEIM: And it is, Judge.

9 THE COURT: So I'm going to have to ask  
10 somebody else.

11 MR. HEIM: My notes, and I'll just read you  
12 the capsule notes I made last night, it said -- and I'm  
13 reading from my notes -- kids have been the target of a  
14 massive media campaign to hook them on cigarettes.  
15 That's from my notes, and that sounds pretty  
16 consistent --

17 THE COURT: Well, if he actually said those  
18 words, and I suppose -- how many people here watched  
19 this? How many people here remember that quote?

20 MR. CHUMBLEY: Your Honor, I can represent as  
21 an officer of the Court that he did make comments as in  
22 the New York Times about targeting youth.

23 MR. ZACK: Likewise, Your Honor.

24 THE COURT: You folks didn't watch it either  
25 on the plaintiffs side?

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1 No.

2 MR. ROSENBLATT: Mr. Lucoff is raising his  
3 hand, but I suggest you not call on him.

4 THE COURT: What did you hear him say?

5 MR. LUCOFF: I heard what Mr. Heim said.

6 MR. HEIM: And then he also went on and  
7 said --

8 THE COURT: That's why I'm concerned, and  
9 that's why I'm going to have to inquire from the jury.

10 I don't want to make, as you say, a call  
11 celeb on it. I don't want to put undue emphasis on it.  
12 I think it's important to know whether they heard it.  
13 They may not have. They may have missed it. They may  
14 have been out in the kitchen at that particular time.  
15 Who knows?

16 But let me find out.

17 MR. ROSENBLATT: All right. Let me suggest,  
18 since that's your -- since that's what you propose to  
19 do, Judge, I would strongly suggest that you do it in  
20 stages; that you say, how many of you watched the State  
21 of the Union address? I mean, obviously, if no one  
22 raises their hand, I would think it's the end of the  
23 problem.

24 But then the second -- I mean, I think it has  
25 to be thought out before we get them in, and I'm -- as

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1 I speak, I'm thinking out loud, and then I think  
2 perhaps the second stage question, you know, should be:  
3 Did any of you hear in President Clinton's address last  
4 night any reference to any tobacco issue?

5 It should be very generic, obviously.

6 THE COURT: Yes, I agree. And I intended to  
7 do that even though you folks didn't raise the issue --  
8 if you hadn't raised the issue, I would have done it  
9 anyway.  
10 MR. HEIM: I have a little bit of a different  
11 approach from Mr. Rosenblatt, but I think the deputy  
12 wants to talk to Your Honor.  
13 (Discussion off the record.)  
14 THE COURT: The A.P. representative says they  
15 can pull out of their computer the actual wording that  
16 was used last night.  
17 MR. HEIM: That would be helpful.  
18 THE COURT: So if they can do it, let her do  
19 it.  
20 Okay. No. I think it's important enough  
21 that we inquire.  
22 MR. HEIM: Your Honor, my suggested approach  
23 starts out the same way as plaintiffs' counsel. I  
24 think the right way to start out is to ask the  
25 question: Did any of you see the President's address,  
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1 without making any reference to tobacco. So I agree as  
2 far as that goes.  
3 I think the next question has to be, to make  
4 sense, how many of you saw news reports about it or  
5 read about it?  
6 THE COURT: I'll take care of it.  
7 MR. HEIM: And beyond that, the --  
8 THE COURT: I'll take care of it.  
9 MR. HEIM: But I think beyond that, if there  
10 are affirmative responses, people should be asked  
11 individually about tobacco, rather than have the whole  
12 jury hear it.  
13 MR. ROSENBLATT: Although, I would say --  
14 THE COURT: Don't want to get into a  
15 discussion with you on what I, as a Judge, should do.  
16 MR. ROSENBLATT: No, no.  
17 THE COURT: I'm just going to do what I think  
18 is appropriate to do it.  
19 MR. ROSENBLATT: That wasn't my comment.  
20 THE COURT: No. No.  
21 MR. ROSENBLATT: I was just going to make a  
22 prediction.  
23 THE COURT: A prediction.  
24 MR. ROSENBLATT: Yes. My prediction is that  
25 when you -- however many people say, when you get to  
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1 the bottom-line question, which I assume is going to  
2 be --  
3 THE COURT: Don't predict. You get yourself  
4 in trouble.  
5 MR. ROSENBLATT: It's not going to influence  
6 them.  
7 THE COURT: How many people -- how many  
8 people are in the United States? What's the total  
9 population?  
10 MS. ROSENBLATT: 250 million.  
11 MR. HEIM: 240 million or something like  
12 that.



13 THE COURT: 250 million. 60 million watched.  
14 Which means what?  
15 MR. MOSS: One-fourth.  
16 THE COURT: One-quarter. It would be  
17 interesting to see.  
18 MR. ROSS: Don't forget, a lot of us 250  
19 million are under the age of 6 or 7 who never would  
20 have watched it.  
21 THE COURT: Okay. Is the jury here?  
22 THE BAILIFF: One was short.  
23 THE COURT: We're short one. Let's take a  
24 short break, folks.  
25 Mr. Chumbley, are you still here? Why don't  
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1 you get together with the clerk and discuss with her  
2 those sealed documents that --  
3 MR. CHUMBLEY: I don't know anything about  
4 the sealed documents. That's Mr. Geraghty's issue.  
5 THE COURT: Mr. Moss, do you want to talk  
6 with the clerk about those sealed documents, if you  
7 know.  
8 (Recess.)  
9 THE COURT: Is everybody here that's supposed  
10 to be here?  
11 MR. ROSENBLATT: Yes.  
12 THE COURT: Okay. I guess we can get the  
13 jury out.  
14 THE BAILIFF: Bringing in the jury.  
15 (The jurors entered the courtroom.)  
16 THE COURT: I guess we're all here. Have a  
17 seat, folks.  
18 Before we begin, let me ask you a couple of  
19 things.  
20 How many of you folks watched the State of  
21 the Union address by President Clinton last night?  
22 Just two of you.  
23 JUROR 805: I hit the mute button the minute  
24 I heard him start to say anything.  
25 THE COURT: Just the two of you.  
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1 How many of you folks either watched the  
2 television or read newspaper accounts of the  
3 Presidential Address, say, this morning?  
4 JUROR 331: I heard a little of it. Just a  
5 little speech.  
6 THE COURT: Heard a little or read a little?  
7 JUROR 331: Heard a little on the news today.  
8 THE COURT: On the news today. Okay.  
9 What I would like to do is talk to you three  
10 folks just a little bit more about that, if you don't  
11 mind. And I don't want any implication being raised by  
12 that procedure by any of you folks, because we really  
13 don't know what we're talking about at this point.  
14 So I need your number.  
15 JUROR 331: 333.  
16 JUROR 805: 805.  
17 JUROR 729: 729.  
18 JUROR 331: I'm sorry. 331 is my number.  
19 THE COURT: What is it?

20 JUROR 331: 331.  
21 THE COURT: And you're 907. Okay.  
22 So, what I'm going to do is I want to talk to  
23 you folks individually, but, of course, what we talk  
24 about really shouldn't affect anybody else here.  
25 Okay. So why don't you just go back to the  
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1 jury room, and I'll call you out one at a time.  
2 (The jurors exited the courtroom.)  
3 THE COURT: Have a seat, folks. Okay. Let's  
4 talk to 805.  
5 THE BAILIFF: Judge, excuse me. Joette has  
6 the screen here, the little computer from the A.P., if  
7 you want to see this.  
8 Do you want them in now, Judge?  
9 THE COURT: Just 805.  
10 MR. HEIM: Your Honor, the reporter will help  
11 you here.  
12 THE COURT: I think I found it.  
13 Okay. All right. I'll work on that.  
14 Okay. Let's bring out 805.  
15 MR. HEIM: Your Honor, I'm sure the Court  
16 will, to the extent that the Court is satisfied with  
17 whatever response the jury gives, will instruct that  
18 juror not to discuss it with any of the others that are  
19 back there.  
20 THE COURT: Yes.  
21 THE BAILIFF: Bringing her in, Judge.  
22 THE COURT: Yes. Go ahead.  
23 (Juror 805 entered the courtroom.)  
24 THE COURT: Have a seat.  
25 There's nothing to be concerned about. I  
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1 really wanted to find out, since you either watched all  
2 of it or part of it, did you recall anything in the  
3 speech by the President that may have any relationship  
4 to tobacco and the tobacco industry?  
5 JUROR 805: No. All I heard was advertising  
6 to young people, and when -- the minute I heard  
7 tobacco, I hit the mute button. I turned away. I said  
8 to my son who was sitting there, when they start  
9 applauding, let me know, because I figure that was  
10 going to be the end of that speech, because that's what  
11 they had been doing through everything.  
12 THE COURT: So what you heard was a rather  
13 brief statement regarding that?  
14 JUROR 805: Yes.  
15 THE COURT: But it did mention children?  
16 JUROR 805: Right.  
17 THE COURT: Whatever it is that you did hear,  
18 inadvertently as we understand, will that in any way  
19 have any affect or impact upon the way you decide any  
20 of the issues in this case?  
21 JUROR 805: I don't think so.  
22 THE COURT: Did you see anything in the  
23 newspaper as a review of it?  
24 JUROR 805: No. I haven't looked at the paper  
25 this morning.  
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1 THE COURT: Or this morning, TV shows or  
2 anything of that nature?  
3 JUROR 805: No.  
4 THE COURT: After the speech, there generally  
5 is what we refer to as the talking head, resumes and  
6 all of that.  
7 JUROR 805: I didn't listen to anything after  
8 he was through. I went to bed.  
9 THE COURT: Okay. So as far as you're  
10 concerned, nothing that was said last night will in any  
11 way affect your duty and functions as a juror in this  
12 case?  
13 JUROR 805: No, because I think that it's  
14 things that have been common knowledge that, you know,  
15 it's been brought up in here about the advertising and  
16 this type thing, and that was kind of what I heard when  
17 he said advertising to children.  
18 THE COURT: Any questions from either side?  
19 MR. HEIM: No, Your Honor.  
20 THE COURT: All right.  
21 Please, when you go back to the room, they  
22 want to know what we're talking about. It wouldn't be  
23 appropriate if you did discuss it with them. Just tell  
24 them you've been instructed by the Court not to discuss  
25 it.

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1 JUROR 805: Okay.  
2 THE COURT: Thank you.  
3 (Juror 805 exited the courtroom.)  
4 THE COURT: Let's bring out 729.  
5 (Juror 729 entered the courtroom.)  
6 THE COURT: All right, sir. You are number  
7 729?  
8 JUROR 729: Yes, sir.  
9 THE COURT: The reason I asked you is because  
10 I did want to talk to you a little bit about the speech  
11 you heard last night. Did you watch the whole speech?  
12 JUROR 729: No, I didn't. The part you're  
13 talking about I didn't see it. My wife mentioned it to  
14 me, but I didn't see it.  
15 THE COURT: What part are we talking about?  
16 JUROR 729: The part where the -- about the  
17 tobacco company and the man, that she said something  
18 about -- she told me this. She wasn't talking about  
19 it, because I was on the case. She just said Clinton  
20 said -- I'm quoting my wife. She said Clinton just  
21 said that the tobacco companies or something should pay  
22 for the insurance of people sick or something like  
23 that, but I didn't hear it or see it. But I did watch  
24 part of the --

25 THE COURT: Well, you watched part of the  
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1 speech, but you didn't see that part?  
2 JUROR 729: I didn't see that part, no.  
3 THE COURT: After your wife had discussed  
4 whatever --  
5 JUROR 729: Well, we didn't discuss it.

6 THE COURT: That's what I'm saying. Did you  
7 talk?  
8 JUROR 729: No, no, no. We never discuss it.  
9 She just told me about what he said, but we didn't have  
10 no discussion about it.  
11 THE COURT: And since that time have you seen  
12 anything in the newspapers or watched any show or  
13 anything?  
14 JUROR 729: No. We've seen some stuff about  
15 a week or so ago or two weeks ago, maybe more than  
16 that, we was in the jury room. We all got rid of it.  
17 We didn't read it. Somebody mentioned it in the --  
18 something was in the papers one morning. I think we  
19 told you that, and we didn't -- we didn't read it. No.  
20 THE COURT: Whatever it was that was  
21 mentioned to you about your wife regarding what she  
22 believed he said --  
23 JUROR 729: Yes.  
24 THE COURT: -- will that have any impact  
25 upon you as a juror?  
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1 JUROR 729: Oh, no.  
2 THE COURT: Deciding any of these issues?  
3 JUROR 729: No. That's why we didn't discuss  
4 it at all. She just mentioned it was on the part of  
5 the speech. But I didn't see it. And it wouldn't have  
6 any.  
7 THE COURT: Okay. Any questions by either  
8 side?  
9 MR. ROSENBLATT: No.  
10 MR. HEIM: No, sir.  
11 THE COURT: They will what to know in there  
12 what we're talking about out here. It wouldn't be  
13 appropriate if you did.  
14 JUROR 729: No.  
15 THE COURT: Just tell them you've been  
16 instructed not to.  
17 JUROR 729: Okay.  
18 THE COURT: Thank you.  
19 JUROR 729: Thank you.  
20 (Juror 729 exited the courtroom.)  
21 THE COURT: Bring out number -- what was  
22 that?  
23 MR. HEIM: 907.  
24 THE COURT: Is it 907?  
25 MR. REID: 907 and 331.  
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1 MR. HEIM: 907 and 331.  
2 THE COURT: Yes. It was 907. I wrote down  
3 707.  
4 (Juror 907 entered the courtroom.)  
5 THE COURT: Okay. How are you, sir?  
6 JUROR 907: Pretty good.  
7 THE COURT: The reason I want to talk to you  
8 is you mentioned that you did watch at least some, if  
9 not all, of the President's speech last night?  
10 JUROR 907: Yes, sir.  
11 THE COURT: Did you see the whole thing?  
12 JUROR 907: Yes.

13 THE COURT: And do you recall during the  
14 entire speech whether anything was said about tobacco  
15 or tobacco-related matters?  
16 JUROR 907: There was some things said there.  
17 THE COURT: Okay. What is it you recall  
18 hearing?  
19 JUROR 907: Relative to something about the  
20 government going after the tobacco companies and having  
21 to do with advertisement and children.  
22 THE COURT: What, if anything, will be the  
23 impact of what was said last night by the President  
24 upon you as a juror in this case?  
25 JUROR 907: The way I see it, the President  
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1 is just, from the way I see it in this case, he's just  
2 another person with an opinion, and I just happened to  
3 see it. He just happened to be giving the State of the  
4 Union address.  
5 To me, it will not influence me in any way.  
6 THE COURT: You understand our concern --  
7 JUROR 907: Yes, sir.  
8 THE COURT: -- as to whether or not that will  
9 affect you or influence you in any way about any of the  
10 issues in this case?  
11 JUROR 907: Correct.  
12 THE COURT: Can you assure both sides in this  
13 matter that it will not?  
14 JUROR 907: Yes, sir.  
15 THE COURT: Did you discuss the President's  
16 speech along these lines with anyone?  
17 JUROR 907: No.  
18 THE COURT: Did you watch any other shows,  
19 we're talking head reviews and what happens usually  
20 after the speech?  
21 JUROR 907: I think it was mentioned this  
22 morning also on Channel 7. Usually when I get dressed,  
23 I watch the news.  
24 THE COURT: You watch it?  
25 JUROR 907: And I think they repeated what  
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1 the President said.  
2 THE COURT: Okay. Will that have any affect  
3 upon you?  
4 JUROR 907: No, sir.  
5 THE COURT: Did you read the newspaper this  
6 morning?  
7 JUROR 907: It was there also.  
8 THE COURT: Did you see anything in there?  
9 JUROR 907: Yes.  
10 THE COURT: So regardless of what  
11 communication media that you received this information  
12 from, can you assure us that you can set that aside --  
13 JUROR 907: 100 percent.  
14 THE COURT: -- and not let it interfere with  
15 your consideration to any of the issues?  
16 JUROR 907: Yes, sir.  
17 THE COURT: Any questions?  
18 MR. HEIM: No, sir.  
19 MR. ROSENBLATT: No, sir.

20 THE COURT: All right. Thank you very much.  
21 Please, when you go back in there and they want to know  
22 what we talked about --  
23 JUROR 907: None of their business.  
24 THE COURT: You can't tell them -- I wouldn't  
25 say none of your business, but just tell them the Court  
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1 has instructed you not to discuss it.  
2 JUROR 907: Yes, sir.  
3 THE COURT: Thank you.  
4 JUROR 907: Thank you.  
5 THE COURT: And 331.  
6 (Juror 907 exited the courtroom.)  
7 (Juror 331 entered the courtroom.)  
8 THE COURT: Okay. The reason I wanted to  
9 talk to you is because you indicated you either saw  
10 some of or part of or all of the State of the Union  
11 speech last or had some information regarding it.  
12 JUROR 331: Yes.  
13 THE COURT: So did you watch the whole  
14 speech?  
15 JUROR 331: No.  
16 THE COURT: Did you watch part of it?  
17 JUROR 331: No. What I saw was the -- a news  
18 reel this morning on NBC.  
19 THE COURT: Okay. So you didn't watch the  
20 speech itself?  
21 JUROR 331: No.  
22 THE COURT: You didn't watch all of the  
23 talking head shows afterwards?  
24 JUROR 331: No.  
25 THE COURT: But this morning on the news  
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1 program?  
2 JUROR 331: Yes.  
3 THE COURT: What channel was it?  
4 JUROR 331: NBC. Katie Couric and Matt  
5 Lauer.  
6 THE COURT: Do you recall what, if anything,  
7 they did say on that show?  
8 JUROR 331: They showed a tape where I guess  
9 he was paying homage to his wife and there was clapping  
10 going on. And they also said -- showed the part where  
11 he said he would be suing the tobacco companies.  
12 That's all that I heard.  
13 THE COURT: That's what we wanted to find  
14 out.  
15 So something was mentioned about the tobacco  
16 companies?  
17 JUROR 331: Yes.  
18 THE COURT: Did that have any impact upon  
19 you?  
20 JUROR 331: No.  
21 THE COURT: Will it have any impact upon you?  
22 JUROR 331: No. Because immediately I heard  
23 tobacco company, I started trying to get away from it.  
24 THE COURT: Okay. It's not an easy thing to  
25 do.

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1 JUROR 331: No.  
2 THE COURT: Okay. But I think what each side  
3 needs to be assured of is that whatever it is you  
4 heard, in whatever context you heard it, will have no  
5 affect on your ultimate decision on any of the issues  
6 in this case?  
7 JUROR 331: No.  
8 THE COURT: Can you assure them of that?  
9 JUROR 331: I'm sure of it.  
10 THE COURT: Any questions from either side?  
11 MR. ROSENBLATT: No, sir.  
12 MR. HEIM: No, sir.  
13 THE COURT: No.  
14 MR. HEIM: No, sir.  
15 THE COURT: All right. Well, thank you very  
16 much, ma'am. When you go back and they want to know  
17 what we talked about, you just simply tell them that  
18 the Court has instructed you not to discuss it.  
19 JUROR 331: All right.  
20 THE COURT: I appreciate it. Thank you.  
21 (Juror 331 exited the courtroom.)  
22 THE COURT: Well, I guess the battery ran  
23 out.  
24 The quote was accurate.  
25 All right. Any further need for any  
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1 discussion?  
2 MR. HEIM: Give us just a minute, Your Honor.  
3 (Discussion off the record.)  
4 MR. HEIM: Your Honor, first of all, I want  
5 to say, thank you for making that inquiry, because I  
6 think it was the right thing to do, and I think the  
7 responses, you know, are what they are.  
8 The only response particularly that gave me  
9 any concern was the comment of the one juror about  
10 something being in the jury room.  
11 THE COURT: I was waiting for that.  
12 MR. HEIM: And I'm curious -- I would be  
13 curious as to what that was.  
14 THE COURT: My sense is that -- apparently  
15 they had a newspaper article, and there had been an  
16 article in the paper.  
17 And we had inquired that morning whether  
18 anybody had seen, heard or whatever because of the  
19 nature of the article that was in the paper, I can't  
20 tell you which morning it was, but when there was an  
21 article in the paper regarding tobacco and all that, we  
22 did make inquiries. And I can understand why they may  
23 have a newspaper in there.  
24 What I get from there, as soon as they saw  
25 something in there relating to tobacco, they discarded  
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1 it and did not discuss it. And I'm satisfied they did  
2 exactly what that juror said they did.  
3 But I will ask the bailiff at this point to  
4 be more watchful regarding what they take in there,  
5 newspapers.

6 THE BAILIFF: They bring the newspaper every  
7 morning.  
8 THE COURT: I know, but you've got to check  
9 the newspaper and you've got to see if there's anything  
10 in it.  
11 MR. HEIM: I think what we'll do, Your Honor,  
12 to be helpful to the courtroom deputy, we'll look at  
13 the newspaper in the morning and alert the deputies if  
14 we think there's something in there about tobacco so it  
15 makes it a little easier on the deputies.  
16 I think -- I mean, I did have a great deal of  
17 concern about this, because one of the issues the  
18 President addressed was an issue for which we already  
19 have a motion for mistrial pending with regard to youth  
20 marketing and advertising, and I know we're going to  
21 take that up later this week. But I'm reassured by the  
22 one juror who said that that's the guy's opinion and,  
23 in fact, that he's one person and he has an opinion and  
24 he not only has an opinion, but he has a political  
25 agenda.

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1 So, I think, given the comments that were  
2 made, even though that one person with the opinion is  
3 the President of the United States, at least for a  
4 while --  
5 MR. ROSENBLATT: About two years.  
6 MR. HEIM: Probably.  
7 Now we have plaintiffs' counsel defending the  
8 President. That's the first time he's done that.  
9 MR. ROSENBLATT: No. I'm defending reality.  
10 He's not going anywhere.  
11 MR. HEIM: But in any event, I don't think  
12 there's probably anything more we can do with it.  
13 THE COURT: Okay. I'm satisfied there's been  
14 no breach of court rules, regulations, regarding any  
15 information getting to the jurors, either inadvertently  
16 or directly, through the media or otherwise, that in  
17 any way would affect the outcome of their  
18 decision-making process.  
19 The situation last night was unique. It  
20 occurs only once a year. And the issue itself occurs  
21 once only Lord knows when.  
22 And it was briefly mentioned. It wasn't  
23 really focused in on for any length of time. And I  
24 think the jurors did what they indicated that they  
25 should do and have been doing. As soon as they heard

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1 it, they tuned it out. And I think that was the  
2 essence of it. So I'm satisfied there's been no breach  
3 of any sequestration issues.  
4 MR. MOSS: We certainly will know how to  
5 handle them in trial next year when he gives the State  
6 of the Union.  
7 MR. HEIM: That certainly --  
8 MR. ROSENBLATT: That's a scare tactic,  
9 Judge. Obvious scare tactic.  
10 MR. HEIM: It was intended to scare me.  
11 THE COURT: Shall we take an informal poll.  
12 MR. ROSENBLATT: Well, that throws off all of



13 the estimates of how many million people, you know,  
14 watch. That's two out of sixteen.  
15 THE COURT: Well, no. Actually -- that's  
16 right, because the others didn't. Instead of four,  
17 only two out of sixteen. And you were right.  
18 MR. MARTINEZ: Yes, sir. I would have taken  
19 the bet on the two or under was --  
20 MR. HEIM: If you think of how many adults  
21 there are in the U.S. that would likely be watching  
22 that speech, it may not be that far off.  
23 MR. MARTINEZ: I was watching cartoons. I  
24 thought it would be a little bit better.  
25 THE COURT: All right. So what do we do  
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1 about the polls? All of the polls that go out, about  
2 1600 people can decide what 250 million people are  
3 thinking. That boggles my mind. It really does.  
4 I know what the actuaries say.  
5 Okay. Are we ready to proceed?  
6 MR. ROSENBLATT: Yes, Judge. With Walker  
7 Merryman.  
8 THE COURT: All right. Let's bring the jury  
9 out and get going.  
10 (The jurors entered the courtroom.)  
11 THE COURT: Okay. We are ready.  
12 Mr. Silverman is now going to be Miss Merlo, I believe.  
13 MR. ROSENBLATT: No, no. It's Mr. Merryman.  
14 He can maintain his sex, Your Honor.  
15 THE COURT: Maybe this afternoon.  
16 MR. ROSENBLATT: I'm going to bring in a  
17 woman to read -- an associate from my office, Maureen  
18 Markwith, to read Mrs. Merlo.  
19 MR. HEIM: Good. I was hoping that would  
20 happen.  
21 MR. ROSENBLATT: Or I was going to have  
22 Mr. Heim cooperate.  
23 MR. HEIM: In that case, I would be the  
24 reader.  
25 MR. ROSENBLATT: Definitely.  
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1 THE COURT: Okay. All that being said and  
2 done, we are ready with the deposition of --  
3 MR. ROSENBLATT: Walker Merryman.  
4 THE COURT: -- Walker Merryman.  
5 MR. ROSENBLATT: And it's spelled  
6 M-E-R-R-Y-M-A-N, Walker Merryman, taken in Washington  
7 D.C., November 18, 1993.  
8 (The deposition of Walker Merryman was read  
9 to the jury as follows:)  
10 MR. ROSENBLATT: Beginning on Page 4:  
11 Q. Tell us your name, please, and your address.  
12 A. Walker Merryman. Home address is [DELETED]  
13  
14 Q. Who are you employed by?  
15 A. The Tobacco Institute.  
16 Q. What is your title?  
17 A. Vice president and director of  
18 communications.  
19 MR. ROSENBLATT: Go to Line 18 on Page 5:

20 Q. How long have you had your present job with  
21 the Tobacco Institute?  
22 A. My present position, since, I believe, 1982.  
23 Q. And you have been with the Tobacco Institute  
24 starting when?  
25 A. 1976.

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1 Q. Continuously from '76, up until today?  
2 A. That's correct.  
3 Q. Trace for me, if you would, the different  
4 titles, the different lines of work that you have done  
5 since 1976.  
6 A. I was hired in 1976 as an assistant to the  
7 president of the Tobacco Institute. In approximately  
8 1980, I became director of communications.  
9 Then in approximately 1982, I became vice  
10 president and director of communications.  
11 Q. Who hired you?  
12 A. Mr. Horace Kornegay.  
13 Q. He was the president?  
14 A. He was.  
15 MR. ROSENBLATT: And now we go to Page 9,  
16 Line 24:  
17 Q. Mr. Kornegay -- am I pronouncing that right?  
18 A. Yes, you are.  
19 Q. He was president of the Tobacco Institute  
20 from when to when?  
21 A. Well, he was president when I arrived, and as  
22 I understand it, he became president in 1971, I  
23 believe. He retired from the institute several years  
24 ago, five to seven years ago.  
25 Q. Who had been all of the presidents since you

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1 have been there? After Kornegay came who?  
2 A. Sam Chilcote, who is the president.  
3 Q. Really, you have only been with two who were  
4 president?  
5 A. That's right.  
6 MR. ROSENBLATT: We go to Line 22 on Page 10:  
7 Q. What is an average day for you? What do you  
8 do?  
9 A. A great deal of the time is spent responding  
10 to telephone calls from reporters who have inquiries on  
11 a wide variety of subjects.  
12 Q. You personally do that, talk to reporters?  
13 A. I personally do. Yes, sir.  
14 MR. ROSENBLATT: Going to Line 20 on Page 11:  
15 Q. In terms of responding to inquiries, how do  
16 you answer inquiries which deal with specific -- a new  
17 study that might have appeared in the New England  
18 Journal of Medicine, the Journal of the American  
19 Medical Association, that kind of thing, which is  
20 basically antitobacco. And then they say, what do you  
21 have to say about that article?  
22 A. It would be typical for us not to respond  
23 immediately. Because, typically we wouldn't have seen  
24 the study. We would want to have some guidance from  
25 someone who was expert in that area before we

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1 responded.

2 Q. On such questions, who would you get the  
3 guidance from? Is there an in-house scientific person  
4 at the Tobacco Institute?

5 A. No, there is not.

6 Q. So let's say a fairly technical article  
7 appears in the New England Journal of Medicine. It is  
8 obvious to you, as a layman, from reading it, it is  
9 very antitobacco. But you may not be familiar with all  
10 of the words or the jargon in the article.

11 So, what would be your source to help explain  
12 it to you better so you could answer an immediate  
13 question better?

14 A. We might ask a consultant to read this  
15 report, this study, and tell us what it means. That  
16 is, of course, providing we have decided we wish to  
17 respond at all.

18 MR. ROSENBLATT: What's the next page?

19 MR. MARTINEZ: Page 26, Line 2.

20 MR. ROSENBLATT: 26, Line 2:

21 Q. Let's say -- let's say this happened in terms  
22 of a media inquiry. You get a call from the New York  
23 Times, and the reporter says: I got a package of  
24 cigarettes in front of me, and there's a warning on  
25 this package which says, Surgeon Generals' warning.

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1 What does the warning say about cancer; do you know?

2 A. There are four different warning notices that  
3 appear on the cigarette packs in the ads. I don't  
4 recall the specific wording of each one.

5 Q. I think only one of them specifically  
6 mentions the word cancer. What does that warning say,  
7 to the best of your recollection?

8 A. Surgeon Generals' warning: Cigarette smoking  
9 causes cancer, heart disease and emphysema.

10 Q. And the reporter says to you: I got it in  
11 front of me. It says that cigarette smoking causes  
12 lung cancer and heart disease and emphysema. Is that  
13 true?

14 A. I don't know if it is or not. It is  
15 certainly true that the warning appears.

16 Q. And the reporter says to you: How can you do  
17 what you are doing if you don't know if it's true? If  
18 it is true, a lot of people are getting cancer from  
19 your industry and heart disease from your industry, and  
20 you don't know if it's true?

21 So, how can you do what you do?

22 A. Because the American adult public certainly  
23 has a right to purchase product which is legal about  
24 which they are informed.

25 Q. How can they be informed when you're not

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1 informed? You don't know if it's true. How does a guy  
2 in the street who is on an assembly line at Chevrolet,  
3 how is he going to know if you don't know?

4 A. Various public opinion polls over the years  
5 have indicated in excess of 90 percent of the American

6 public know and understand what the Surgeon General and  
7 others have said about smoking. And I think,  
8 therefore, they are informed about the possible risks.

9 Q. As I understood your testimony, your  
10 bottom-line answer to the question whether or not  
11 cigarette smoking causes cancer would be you don't know  
12 whether it does or it doesn't?

13 A. That is correct.

14 Q. What effort have you personally made to find  
15 out whether it does or doesn't?

16 A. I have read a great many of the statements  
17 made by scientists who have studied questions  
18 surrounding smoking and health issues made before  
19 Congressional committee hearings dating back to the mid  
20 1960s, in which a great many questions about smoking  
21 and health issues were explored.

22 Q. But every Surgeon General of the United  
23 States since the early '60s, since about '64, has come  
24 out, republican, democrat, very definitively stating  
25 that cigarette smoking does, in fact, cause cancer and

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1 heart disease and emphysema.

2 What is your evidence on the other side of  
3 the coin?

4 A. As I said, there are a great many people in  
5 science who study these issues, who testified before  
6 Congress over the years who have questions about  
7 whether or not it has ever been established that  
8 smoking causes the diseases that it has been associated  
9 with.

10 Q. Can you name any of them?

11 A. I would have to go back and look. It has  
12 been a very long time. This is not an issue that comes  
13 up with any great frequency at all.

14 Q. As you sit here today, are you aware of any  
15 physician unconnected to the tobacco industry who  
16 publicly takes the position that it has not been proven  
17 that cigarette smoking causes cancer?

18 A. No, I'm not.

19 Q. Have you ever heard of Dr. James Glenn? Does  
20 that name ring a bell to you at all?

21 A. I don't believe so.

22 Q. What do you know about the Council for  
23 Tobacco Research?

24 A. It is, to the best of my knowledge, an  
25 organization which exists to fund scientific research,

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1 and it receives its funding from the tobacco industry.

2 Q. In the same manner that the Tobacco Institute  
3 receives its funding, from the tobacco industry?

4 A. I don't really know.

5 Q. Other -- other than the general statement, do  
6 you know anything specifically about the Council for  
7 Tobacco Research or the members of any Scientific  
8 Advisory Board of the Council for Tobacco Research or  
9 what kinds of things they research?

10 A. I don't really have any specific knowledge in  
11 that area.

12 Q. Well, for example, have you ever seen a

13 published study, formal, informal or unpublished, for  
14 that matter, that was reduced to writing in perhaps an  
15 informal memo form as to any research conducted by the  
16 Council for Tobacco Research?

17 A. I don't think so. Not if I understand your  
18 question.

19 Q. Was there anything unclear?

20 A. It is a little convoluted. If you can  
21 rephrase it, I might be able to answer it better.

22 Q. It is an all-encompassing question,  
23 initially, as to whether or not you have ever seen  
24 anything coming out of the Council for Tobacco  
25 Research, either directly, or any study they ever

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1 funded, where you saw any kind of document describing  
2 what they were researching and what was the result of a  
3 given piece of result?

4 A. The only thing I have ever seen is their  
5 annual report which lists, as I remember, the research  
6 efforts that they are current funding, and I believe  
7 some of the ones they have funded in the past.

8 MR. MARTINEZ: Your Honor, excuse me. I  
9 think that is a typo. I believe it's a typo. I  
10 believe it's currently funding.

11 THE COURT: Currently.

12 MR. ROSENBLATT: Page 31, Line 3:

13 Q. The Council for Tobacco Research would send  
14 that to the Tobacco Institute, or would you have to ask  
15 for it?

16 A. Apparently I'm on a list to receive it.

17 Q. And you get it?

18 A. Yes.

19 Q. Annually?

20 A. Yes.

21 Q. How long a report is that, about?

22 A. Well, I suppose it's 200 pages, perhaps.

23 Q. And in those 200 pages, what I'm trying to  
24 understand is whether or not contained therein is ever  
25 a report indicating the results of a given piece of

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1 research?

2 A. I frankly don't recall.

3 Q. Do you have any concept of what the Council  
4 for Tobacco Research -- what kind of research they  
5 conduct, on what subjects?

6 A. No, I really don't know what research they  
7 conduct. I don't think they conduct research  
8 themselves.

9 Q. No. But in terms of the grants they give  
10 out, in what areas are they giving those grants out?

11 A. I don't know.

12 Q. Had you read various Surgeon General's  
13 Reports over the years?

14 A. I have read some.

15 Q. You would agree, would you not, they are  
16 pretty definitive, the Surgeon General Report, saying  
17 cigarette smoking does, in fact, cause these diseases,  
18 cancer and other diseases?

19 A. Yes.

20 Q. How many Americans do you think have died as  
21 a result of smoking cigarettes during the last 20  
22 years?

23 A. I don't know.

24 Q. Certainly you would agree some have? Or do  
25 you think maybe it is zero?

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1 A. I don't know if it's accurate to place a  
2 number on that kind of statement, since I don't know  
3 whether or not smoking causes disease in the first  
4 place.

5 Q. So it may be from what are you telling me  
6 that cigarette smoking hasn't ever killed anybody, not  
7 a single person, for all you know?

8 A. Cigarette smoking may or may not be  
9 responsible.

10 Q. It may or may not be responsible for either  
11 zillions of deaths or for zero deaths; you just don't  
12 know?

13 A. I do not know.

14 MR. ROSENBLATT: And we go to Line 21 on Page  
15 33:

16 Q. You've worked for the Tobacco Institute since  
17 1976?

18 A. Yes.

19 Q. And you don't know if cigarette smoking  
20 causes cancer, heart disease, emphysema and other  
21 diseases. How is someone, just an average person, how  
22 do you say he is fully informed when you are obviously  
23 not fully informed?

24 A. I think it is very clear from all of the  
25 public opinion surveys that have been done in this

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1 country many years that people are as aware as they  
2 possibly could be, I think, of what the Surgeon General  
3 and others have said about smoking and health issues.

4 The fact that I may not agree with that sort  
5 of definitive statement by the Surgeon General, I  
6 think, has no bearing on whether or not adult  
7 individuals in this country are informed.

8 Q. But they are hearing from guys like you it  
9 hasn't been proven. On the one hand, they are hearing  
10 that it does; they look at the warning, it does, and  
11 then they are hearing from an educated guy like you, it  
12 hasn't been proven, and all of the people say that it  
13 hasn't been proven and the guy likes to smoke and he is  
14 enjoying it.

15 So you provide him with a perfect  
16 rationalization to continue smoking because it hasn't  
17 been proven. Don't you see that?

18 A. I continue to believe wholeheartedly in the  
19 right of an individual adult to make his or her own  
20 decision about whether or not to smoke. It is clear  
21 people are fully informed about smoking and health  
22 issues.

23 Any of the public opinion polls in this  
24 country that have been taken on this subject over the  
25 last two decades have certainly shown that. I think

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1 people have a right to receive information on  
2 controversial issues.

3 The fact that some may disagree about an  
4 issue, I think, is certainly vital and healthy to  
5 discourse in America.

6 Q. It's not healthy to the guy smoking two packs  
7 a day that may develop lung cancer because he hears  
8 people like you say it hasn't been proven, and that's  
9 part of being fully informed. He's hearing people like  
10 you saying it hasn't been proven, maybe it's not  
11 dangerous to smoke and I enjoy it.

12 A. I think everyone has a right to hear  
13 information from a variety of sources and to make their  
14 own decision about whether or not to smoke.

15 Q. But you have no scientific information which  
16 says cigarette smoking does not cause cancer or heart  
17 disease; do you?

18 A. I know of none.

19 Q. Let's look at the group of people. You told  
20 me, I think, that the hopefully informed in polls show,  
21 according to your testimony, that people understand  
22 that the scientific community and Surgeon Generals say  
23 cigarette smoking causes all these terrible diseases.

24 So wouldn't you concede the people who  
25 continue to smoke, in spite of being fully informed,

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1 are addicted and can't help themselves?

2 A. I would say only they made their own decision  
3 with respect to smoking.

4 Q. If a person is addicted, by the very  
5 definition of addiction, he is not capable of making  
6 his own decision; he's addicted. He wants to quit, but  
7 he can't?

8 A. As the Surgeon General says, in excess of 40  
9 million people have quit smoking in the past 25 years,  
10 and the vast majority, 90 percent have quit on their  
11 own. I think that means people can quit smoking if  
12 they want to.

13 Q. Obviously there are a certain number of  
14 people that can't quit smoking, or is it your opinion  
15 that anyone that really makes up their mind and has  
16 willpower can stop smoking any time they want?

17 A. It seems pretty clear to me, based upon past  
18 experience, what we have seen in the Surgeon Generals'  
19 reports on this subject, that millions of people have  
20 quit smoking on their own, having made a decision to do  
21 so.

22 Q. And how many millions of people have tried to  
23 quit and haven't been able to?

24 A. I don't know the answer to that question.

25 Q. How do you think you would function if you

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1 had to go about your business and do everything you  
2 would normally do, but you couldn't smoke a cigarette  
3 for the next week?

4 Do you think you could handle that?

5 A. I don't know. I have never done it.

6 MR. ROSENBLATT: Page 38, Line 6:  
7 Q. What do you do at the Tobacco Institute,  
8 other than respond to media inquiries in terms of your  
9 day-to-day functions and duties?

10 A. I may be called upon to assist in preparing  
11 material to be distributed to the news media, if an  
12 event is to occur in which we are a participant and we  
13 want the news media to know of it.

14 I may respond to calls from the general  
15 public for a variety of types of information that we  
16 may have available. Also a certain amount of reading  
17 involved every day.

18 Q. Like what? What are you reading?

19 A. The general newspapers, news media, to  
20 determine what stories that may involve us may be there  
21 so we can be prepared for additional calls, if there  
22 are any.

23 MR. ROSENBLATT: Page 39, Line 1:

24 Q. What do you have to do with lobbyists, either  
25 at the state, local or Federal level?

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1 A. Well, I know some of the people involved in  
2 dealing with state and Federal issues. I frankly don't  
3 know which of them are or are not registered lobbyists.

4 MR. ROSENBLATT: Page 40, Line 22:

5 Q. I mean, a press release. For example, when  
6 the EPA report came out condemning and talking about  
7 the dangers of environmental tobacco smoke, did you  
8 simply wait for inquiries, or did you, in a sense,  
9 counter-attack?

10 A. In that particular case, we certainly had  
11 material available, which we did send to reporters whom  
12 we believe who are interested in this issue.

13 Q. Is there anyone in the newspaper media at the  
14 national level who has taken the position that the  
15 tobacco industry is being unfairly dealt with and that  
16 it really hasn't been proven that cigarette smoke is  
17 all that dangerous?

18 A. I don't know of anyone.

19 Q. Is that discouraging?

20 A. Well, we provide the information and hope  
21 that we at least get a fair hearing.

22 Q. The only information you provide is that it  
23 hasn't been proven. You just keep saying that. It is  
24 not like when you say you provide the information, you  
25 send them a study saying, look, here's a scientific

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1 study done at a terrific medical school which proves  
2 that cigarette smoking is safe. You never send them  
3 that kind of information.

4 A. I know of no such study.

5 Q. Of course not. It doesn't exist; right?

6 A. I know of no such study.

7 MR. ROSENBLATT: Page 46.

8 MR. SILVERMAN: What happened to 43? That's  
9 out.

10 MR. ROSENBLATT: 46, Line 15:

11 Q. Does the Tobacco Institute make political  
12 contributions?



13 A. Yes. I believe we do.  
14 Q. Is that done through your department?  
15 A. No, it is not.  
16 MR. MARTINEZ: 49.  
17 MR. ROSENBLATT: 49, Line 15:  
18 Q. From the time you first came with the Tobacco  
19 Institute, did they ever put out any kind of in-house  
20 publication? I don't necessarily mean a fancy  
21 magazine, but anything that would have gone to all of  
22 the members?  
23 A. Yes. I believe so.  
24 Q. What was the name of it?  
25 A. The Tobacco Observer.  
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1 MR. ROSENBLATT: Page 51, Line 7:  
2 Q. Is it fair to say the tobacco industry  
3 opposes across the board any smoking ban in any public  
4 building or restaurant?  
5 A. What we support is accommodating smokers and  
6 nonsmokers to the best extent possible.  
7 Q. Could you answer my question now?  
8 A. And we would rather not have legislators  
9 dictating where and when it is appropriate for people  
10 to smoke. We would rather not have legislators telling  
11 people who run restaurants that they may or may not  
12 allow smoking.  
13 We believe the democracy of the market place  
14 can certainly take care of that.  
15 Q. My question was: Is it the policy of the  
16 Tobacco Institute and the tobacco industry to oppose  
17 all bans in all public buildings and restaurants? It  
18 may be for the reasons you just expressed, but I didn't  
19 ask you about those reasons.  
20 A. Well, I can conceive of circumstances under  
21 which we would not oppose a ban on smoking.  
22 Q. I'm not asking you to conceive of  
23 circumstances. I'm asking you as a practical matter,  
24 since you have been with the Tobacco Institute, is it  
25 not true, it has been the policy of the Tobacco  
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1 Institute to, across the board, oppose any proposed  
2 smoking ban in any public building or restaurant?  
3 A. I believe that's true.  
4 MR. ROSENBLATT: Page 56, Line 8:  
5 Q. What is tar?  
6 A. Tar, t-a-r?  
7 Q. T-a-r. Is that a term you are familiar with?  
8 A. I am. It is condensate measured after a  
9 machine-smoking method. The product of incomplete  
10 combustion. It is measured in milligrams.  
11 Q. What does that mean, condensate?  
12 A. It is the product of the incomplete  
13 combustion of the cigarette.  
14 Q. Why do so many cigarette advertisements  
15 stress low tar? What is the difference between low tar  
16 and high tar? Who cares?  
17 A. The low-tar cigarettes are generally those  
18 that are below 15 milligrams yield per cigarette.  
19 Q. But what does that mean to the well-informed

20 consumer you keep talking about? This well-informed  
21 guy who sees this brand has 14 milligrams of tar, this  
22 brand has 6 milligrams of tar, what is the difference  
23 to this well-informed consumer?

24 A. I don't know what the difference might be.

25 Q. Then why does the cigarette industry, in all

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1 its advertising, refer to the tar content in  
2 milligrams?

3 A. I have always assumed that companies provide  
4 a variety of products to their consumers, based on what  
5 they believe their consumers want to buy.

6 Beyond that, I really don't have any  
7 knowledge why a variety of products may be on the  
8 market.

9 Q. I'm not asking about a variety of products.  
10 I'm talking about cigarettes. And I'm talking about  
11 why, based on your position in the Tobacco Institute,  
12 for all of these years, why you think various companies  
13 stress in their advertising that my cigarette is low  
14 tar, my cigarette is lower tar than the other guy's  
15 cigarette, and, therefore, you should buy my cigarette?

16 Why do you think they do that?

17 A. I really don't know why they do that. I'm  
18 not in advertising or marketing.

19 Q. Never occurred to you to ask anybody?

20 A. No, it has not.

21 MR. ROSENBLATT: 64, Line 13:

22 Q. Do you personally ever have occasion to  
23 testify before Congressional committees?

24 A. I think I have done so once.

25 Q. Who usually does the testifying from the

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1 Tobacco Institute?

2 A. I believe Charlie Whitley usually does the  
3 testimony.

4 Q. He is the former Congressman from North  
5 Carolina?

6 A. He is a former Congressman from North  
7 Carolina.

8 Q. So he goes up to the -- he goes up on the  
9 Hill and testifies quite frequently?

10 A. He has.

11 Q. Is he a full-time employee of the Tobacco  
12 Institute, Mr. Whitley?

13 A. I don't believe he is an employee, no.

14 Q. What is he?

15 A. He is a consultant.

16 Q. His office is right there, isn't it, at the  
17 Tobacco Institute?

18 A. He does have an office assigned to him in the  
19 Tobacco Institute, yes.

20 MR. ROSENBLATT: Page 66, Line 7:

21 Q. I'm showing you something called the Tobacco  
22 Institute Scope and Activities. It is a copy. I ask  
23 you if you have ever seen that before?

24 My understanding is it is a copy of a  
25 brochure that the Tobacco Institute put out.

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1 A. Yes. It appears to be.  
2 Q. You have seen that before?  
3 A. I believe I have.  
4 Q. Did you write this or any part of it?  
5 A. No.  
6 Q. Would you know who did?  
7 A. No, I do not.  
8 Q. Do you know what the purpose of this was?  
9 I mean, it looks to me like it would be  
10 intended maybe for the general public. I don't know.  
11 A. I believe it is, yes.  
12 Q. And as a practical matter, how did this get  
13 to the general public? Was this only given to people  
14 who called and had inquiries, or was this disseminated  
15 on some wider basis?  
16 A. I don't know of any wide dissemination that  
17 was ever given. Personally, I would give it to someone  
18 who asked what the mission of the institute is.  
19 Q. Is this still in existence? Do you still  
20 have this now, this brochure?  
21 A. Either that or a version of it.  
22 Q. You mention you were involved with issues  
23 involving environmental tobacco smoke and its role in  
24 indoor air quality.  
25 The institute is a communicator of  
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1 information and viewpoints on these and other matters  
2 to the public, the news media, and government on a  
3 local, state and national level. What do you tell  
4 people that call up and ask you about environmental  
5 tobacco smoke?  
6 A. I would respond to specific questions.  
7 Q. How would you respond to this question: I'm  
8 not a nonsmoker. I'm working in a place where everyone  
9 is smoking, and I don't like it and I think it's bad  
10 for my health. Is it?  
11 A. I don't know if it is or not. But I think,  
12 in any indoor environment, there are a wide variety of  
13 things which might contribute to the quality of the  
14 air. In that environment, tobacco smoke might be one  
15 of them.  
16 Q. Obviously you really have no solution for a  
17 person with that kind of inquiry?  
18 A. I don't have any specific solution to offer,  
19 no, I don't.  
20 MR. MARTINEZ: 75, Line 9.  
21 MR. ROSENBLATT: You heard that?  
22 MR. SILVERMAN: No.  
23 MR. ROSENBLATT: Page 75, Line 9:  
24 Q. Do you ever get involved in discussions about  
25 advertising?

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1 A. To the extent there may be proposals to ban  
2 advertising, yes, sir.  
3 Q. How would you answer an inquiry from a parent  
4 with very young children driving on the highway or  
5 driving within a city and they see all these Joe Camel

6 cartoons, and the kids think it is cute and you are  
7 asked a question, why do you have these billboards all  
8 over the place where little kids can see them? Do you  
9 think that's responsible?

10 MR. ROSENBLATT: And you go to the top of  
11 Page 76:

12 A. With respect to the advertising of the  
13 product itself, I would simply say that there are a  
14 number of products and services advertised that are  
15 intended for adults to buy and to use. Cigarettes are  
16 one of them.

17 Inevitably, I suppose, people who either by  
18 law or by social custom are allowed to purchase and use  
19 the product are going to see advertisements for them.  
20 That relates not to just cigarettes.

21 Q. That would be your answer to the person who  
22 is complaining about a huge billboard for Joe Camel  
23 where little kids can see them? That would be the  
24 answer you give?

25 A. Yes.

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1 Q. You tell them about all these other products?

2 A. I provided my answer.

3 MR. MARTINEZ: Page 90, Line 23.

4 MR. ROSENBLATT: Page 90, Line 23:

5 Q. You are quoted in the Washington Post back in  
6 April of 1988 as saying: If we are attacked, we are  
7 not going to roll over and play dead. The sooner our  
8 adversaries learn that, the less difficulties they are  
9 going to find themselves in.

10 I handed -- yes. You were quoted as saying:  
11 If we are attacked, we are not going to roll over and  
12 play dead. The sooner our adversaries learn that, the  
13 less difficulty they are going to find themselves in.

14 And my question is, what did you mean by  
15 that?

16 MR. ROSENBLATT: You're on Line 20, Page 91,  
17 The answer:

18 A. That we were certainly going to vigorously  
19 defend our industry. And we certainly weren't going to  
20 allow our adversaries to win any issue without  
21 opposition.

22 Q. Who were your adversaries? Your adversaries  
23 are all those people that are convinced that cigarette  
24 smoking causes cancer, heart disease, emphysema and  
25 other diseases. Those are your adversaries; right?

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1 A. It depends on the forum. Our adversaries may  
2 be political, or they may be antismoking organizations.  
3 It depends on the issue.

4 Q. Your adversary is an individual, as well as  
5 an organization, an individual who believes that  
6 smoking is an evil curse on American society and it  
7 causes nothing but pain, agony and death.

8 A person who has that belief is your  
9 adversary; right?

10 A. Maybe.

11 Q. Not maybe. How is that person not your  
12 adversary? He hates the tobacco industry because he or

13 she believes it is an evil product which kills people.  
14 That person, an American who believes that, is your  
15 adversary, and you're not going to roll over and play  
16 dead?

17 A. If that individual, as you described him or  
18 her, proposes some sort of regulatory or legislative  
19 action that is not in our interests, then we would,  
20 obviously, be in an adversarial relationship.

21 MR. ROSENBLATT: That's all for this depo.

22 THE COURT: That's it? If that's it, that's  
23 it. All right.

24 Okay.

25 MR. ROSENBLATT: My other reader is not here,  
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1 but that's okay.

2 THE COURT: So, do you want to start with  
3 Merlo?

4 MR. ROSENBLATT: Whatever. Whatever, Judge.  
5 I could have the young lady from my office  
6 here, you know, in five minutes.

7 THE COURT: Then let's take five minutes.

8 MR. SILVERMAN: I'm done?

9 THE COURT: As far as I know.

10 (The jurors exited the courtroom.)

11 (Recess)

12 THE COURT: Did we finish Merlo?

13 MR. ROSENBLATT: No. Stopped at 121, and we  
14 figured let the jury hear part of it.

15 THE COURT: I guess we can do the first part  
16 and then break for lunch and then pick up the rest.

17 Okay.

18 All right. We need Mr. Heim.

19 What we decided to do is go ahead and do part  
20 of the Merlo we've already been through and break for  
21 lunch. And after lunch, we'll go through the rest of  
22 it, because it's 100 and some odd pages. So that will  
23 take some time.

24 MR. HEIM: Okay.

25 THE COURT: Okay. So I guess we'll bring the  
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1 jury out.

2 THE BAILIFF: Bringing in the jury.

3 (The jurors entered the courtroom.)

4 THE COURT: All right. Have a seat, folks.

5 All right. Now we're ready with Miss Merlo's  
6 deposition. And the young lady is --

7 MS. MARKWITH: Maureen Markwith.

8 THE COURT: Ms. Markwith is going to play the  
9 part of Miss Merlo.

10 All right.

11 MR. ROSENBLATT: Okay. Miss Merlo's  
12 deposition was taken December 7, 1993, in New York.

13 (The deposition of Ellen Merlo was read to  
14 the jury as follows:)

15 MR. ROSENBLATT: We begin on Page 3:

16 Q. State your name, please.

17 A. Ellen Merlo.

18 Q. And your address?

19 A. [DELETED].

20 Q. That's your home?  
21 A. That's my home.  
22 Q. What is your business address?  
23 A. 120 Park Avenue, New York.  
24 Q. Who are you employed by?  
25 A. Philip Morris, USA.  
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1 Q. How long have you been employed by them?  
2 A. Almost 25 years.  
3 MR. ROSENBLATT: And then we go to Page 11,  
4 Line 8:  
5 Q. You left California to go to Canada?  
6 A. Well, I left California and came back to New  
7 York. I came to New York and set up a series of job  
8 interviews to get myself back to New York and wanted a  
9 job before I came.  
10 I was interviewed by several people and there  
11 was a position with Benson & Hedges Canada that was  
12 intriguing to me. I wanted to come back east and felt  
13 that that was a good way to do it. I took the job.  
14 Benson & Hedges Canada, Ltd. was a subsidiary  
15 of Philip Morris. Basically I went to work for Philip  
16 Morris, but I was in Montreal for about nine months.  
17 Q. And then you came back to New York?  
18 A. And then I was transferred back to New York,  
19 yes.  
20 Q. What did you do specifically during the  
21 period of time that you were in Montreal with Benson &  
22 Hedges?  
23 A. I was manager of -- basically I was  
24 responsible for corporate relations. I wrote the  
25 in-house newsletters, news report, employee relations,  
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1 some of our sponsorship programs.  
2 We were sponsoring art shows, cultural  
3 events, et cetera. I was involved with managing all of  
4 those projects.  
5 MR. ROSENBLATT: We go to Page 13, Line 18 --  
6 you don't have to worry about talking into the  
7 microphone.  
8 MS. MARKWITH: Okay.  
9 MR. ROSENBLATT: It will pick it up. You can  
10 just talk naturally. It will pick it up.  
11 Page 13, Line 18:  
12 Q. How was the transfer arranged from Canada to  
13 New York? I mean, was that the understanding when you  
14 went to Canada, that it was going to be temporary and  
15 when something opened up in New York, you would go to  
16 New York?  
17 A. No. I had been working on organizing a board  
18 of directors meeting that was held up in our Ontario  
19 facility and met a lot of the people that were in the  
20 New York office, and there was an opening in the New  
21 York office, and I guess some of the executives knew I  
22 was originally from New York and asked me if I was  
23 interested, and I was, so I transferred.  
24 Q. Did you meet Bill Campbell in Canada?  
25 A. Yes, I did.  
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- 1 Q. Was he working in Canada while you were  
2 working in Canada?
- 3 A. Yes, he was.
- 4 Q. What was his title?
- 5 A. He was an assistant brand manager, I think,  
6 of Belvedere or Mark Ten or one of the cigarette  
7 brands. I think probably a brand manager by the  
8 time -- either by the time I left or shortly  
9 thereafter.
- 10 Q. You and he worked out of the same office?
- 11 A. The same headquarters.
- 12 Q. The same location?
- 13 A. Yes.
- 14 Q. During the period of time that you were in  
15 Canada, did you have a lot of contact with him?
- 16 A. Not really. I mean, I saw him frequently in  
17 the office. We knew each other. I wouldn't say we  
18 were friends.
- 19 Q. Did you work with him directly?
- 20 A. Not really, because my work really was much  
21 more concerned with our sponsorship and employee  
22 relations and writing the employee newsletter, where  
23 his job was much more marketing-focused.
- 24 Q. Give me -- give me an idea of some of the  
25 kinds of sponsorship programs that you ran in Montreal.

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- 1 A. The primary sponsorships that we ran in  
2 Montreal had to do with our sponsorships of various  
3 kinds of art. Had to do with art, sponsoring an  
4 up-and-coming new artist at a museum show or shows that  
5 traveled around the country showcasing art.
- 6 We started an art-in-the-factory show. Most  
7 of it had to do with cultural and art events.
- 8 And then, shortly before I left, we got  
9 involved in sponsoring horse racing. I was not very  
10 involved because it came about and I left at about the  
11 same time.
- 12 Q. Was that horse racing in Montreal?
- 13 A. It was throughout Canada. It was just in  
14 Montreal. Montreal was the corporate headquarters for  
15 Benson & Hedges Canada. Whatever we did really applied  
16 to all of Canada.
- 17 Q. Did Campbell also work for Benson & Hedges?
- 18 A. Yes, he did.
- 19 Q. Were these sponsorships that you've  
20 described, were they under the name of Philip Morris or  
21 under the name of Benson & Hedges?
- 22 A. The art sponsorships were under the name  
23 usually of Benson & Hedges Canada, Ltd. In some cases,  
24 it might -- it might be done on behalf of a specific  
25 brands, like the Mark Ten something or the Belvedere

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- 1 something.
- 2 Q. Did Canada have particular brands that were  
3 generally not available in the United States?
- 4 A. Yes.
- 5 Q. Which were they?

6 A. Mark Ten, Belvedere, those are the two that  
7 really -- I think we had Alpine and Canada, as well,  
8 which was available in the United States.  
9 I don't remember the rest of the brand line.  
10 Q. And --  
11 A. Those were the two main brands.  
12 Q. And were the top-selling American brands also  
13 available in Canada?  
14 A. No. Marlboro was not available in Canada. I  
15 think that was the only country that Philip Morris does  
16 not own the trademark.  
17 Q. How does that work?  
18 A. They just don't own it in Canada, which means  
19 they cannot advertise in Canada. The product is not  
20 available in Canada.  
21 Q. By law, it's not available?  
22 A. No. It would --  
23 MR. ROSENBLATT: No, no. Oh, go ahead.  
24 A. No.  
25 MR. ROSENBLATT: Oh, that's it. Just "no."  
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1 Then we go to Page 19 -- Page 19, Line 19:  
2 Q. Okay. What's the policy now in the U.S. at  
3 Philip Morris with respect to employees getting free  
4 cigarettes?  
5 A. The policy is in the U.S., I believe, a  
6 carton a week to those employees who wish to have them.  
7 Q. Has that changed over the years?  
8 A. As long as I remember being in the U.S.,  
9 that's been the policy.  
10 Q. Are you a smoker?  
11 A. No, I'm not.  
12 Q. Never?  
13 A. Yes. At one point in my life I did smoke.  
14 Q. At what age did you first smoke?  
15 A. 18.  
16 Q. And you smoked until about what age?  
17 A. 25.  
18 Q. During the time frame that you were a smoker,  
19 how heavy a smoker?  
20 A. A pack, give or take, a day.  
21 Q. What was your brand?  
22 A. When I started smoking, I smoked Pall Mall.  
23 And then I switched to Marlboro.  
24 Q. During the period of time that you were a  
25 smoker, were there time frames that you would quit for  
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1 a while and then go back to it?  
2 A. No. During the time that I was smoking, I  
3 was smoking.  
4 Q. Why did you stop?  
5 A. I just didn't enjoy it anymore, I guess. I  
6 don't know. No particular reason at the time. I just  
7 kind of stopped.  
8 Q. Not a lot of thought or discussion?  
9 A. Not at all.  
10 Q. Do you remember what about smoking you didn't  
11 enjoy anymore? I would think something had to be --  
12 had to be bothering you.



13 A. Nothing was really bothering me. I just  
14 stopped smoking.  
15 Q. Was it a gradual stopping or, boom, just one  
16 day you stopped?  
17 A. As I recall, it was pretty -- I don't know if  
18 it was -- today I do and tomorrow I don't. It was not  
19 prolonged. Although even at this point, once in a  
20 while, I will have a cigarette.  
21 Q. Did you have any difficulty stopping?  
22 A. Not at all.  
23 Q. And from the time you stopped at  
24 approximately age 24, 25, with the exception of once in  
25 a while taking a cigarette, you've been a nonsmoker?  
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1 A. I think that's a fair way of categorizing it,  
2 yes.  
3 Q. I mean, since you stopped smoking, I mean,  
4 there's never been a day where you smoked as much as  
5 ten cigarettes?  
6 A. No.  
7 MR. ROSENBLATT: Okay. We go to Page 25,  
8 Line 6:  
9 Q. Let me begin to trace with you from the time  
10 you left Canada and you came to Philip Morris. I'm  
11 obviously going to be asking you about different jobs,  
12 different functions, what you've been doing.  
13 You left Canada, came to New York City to  
14 work for Philip Morris in what year?  
15 A. 1970.  
16 Q. And what was your job when you began with  
17 Philip Morris in New York?  
18 A. Administrator of product publicity for Philip  
19 Morris.  
20 Well, let me go back. There were -- there  
21 was three months when I first transferred to New York  
22 that I worked for Philip Morris International in the  
23 New York office.  
24 Q. What exactly is Philip Morris International?  
25 It would seem to explain itself.  
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1 A. It's the international division of Philip  
2 Morris. It was strictly our tobacco operations in the  
3 world, other than in the U.S.  
4 Q. So, anything having to do with the sale of  
5 cigarettes or the manufacture of cigarettes in any  
6 foreign country, any country other than the U.S. would  
7 be under the aegis of Philip Morris International?  
8 A. That's right.  
9 Q. Is that still the set-up today?  
10 A. Yes.  
11 Q. Other than that brief period of time, have  
12 you ever worked for Philip Morris International?  
13 A. No. Benson & Hedges would have been  
14 considered part of Philip Morris International. All  
15 those years, plus altogether, would have been.  
16 Q. After you left Philip Morris International,  
17 you went to work for what entity?  
18 A. Corporate. The corporate entity.  
19 Q. Philip --

20 A. Philip Morris, Incorporated.  
21 Q. And what did you say your title was,  
22 administrator of product --  
23 A. Product publicity.  
24 Q. What exactly does that mean?  
25 A. That was the responsibility for publicizing  
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1 some of our sponsorship programs.  
2 Q. Where would those programs have been  
3 publicized?  
4 A. Newspapers, magazines, primarily.  
5 Q. When did the ban on television and radio go  
6 into effect?  
7 A. 1971.  
8 Q. So in 1970, were you publicizing any of the  
9 sponsorship programs either on television or radio?  
10 A. Most of the work that I did was with  
11 newspapers and magazines. I did not do anything with  
12 radio or television.  
13 Q. Were you involved with advertising of the  
14 product itself?  
15 A. Then, no, not at all.  
16 Q. Describe for me back then what some of the  
17 sponsorship programs were?  
18 A. Virginia Slims Tennis.  
19 Q. Did that start in 1970?  
20 A. That's correct. It started in September of  
21 1970.  
22 Q. And that's been continuing right up until the  
23 present time?  
24 A. With the four-year break, yes.  
25 Q. What happened during the four-year break?  
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1 A. Virginia Slims did not sponsor -- Avon came  
2 in as a primary sponsor, and we were not involved for  
3 about four years.  
4 Q. What does that sponsorship cost in the last  
5 couple of years, to sponsor the Virginia Slims Tennis?  
6 A. The contract with the women's tennis  
7 association for the last four or five years is, I  
8 think, 5.3 million, something like that.  
9 Q. Going back to around 1970, other than the  
10 Virginia Slims Tennis Competition, what else was Philip  
11 Morris sponsoring?  
12 A. Well, we owned Clark chewing gum at the time,  
13 and we sponsored some events with Clark. We were  
14 involved with auto racing for Marlboro. We sponsored  
15 horse racing, the Marlboro Cup.  
16 Q. Where was that run?  
17 A. At Belmont Park.  
18 Q. Any other sponsorships?  
19 A. I believe there was a ski sponsorship with  
20 Benson & Hedges.  
21 Q. Did Philip Morris conduct studies to see if  
22 those kinds of sponsorships increased the sales of  
23 cigarettes?  
24 A. No.  
25 Q. Nothing scientific has been done on that?  
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1 A. No.

2 Q. Is that the main reason for sponsoring these  
3 sporting events, do you think, to basically make the  
4 brands better known among the public, and to,  
5 hopefully, increase sales?

6 A. The main reason for sponsoring these events  
7 is to make the brands better known amongst smokers,  
8 adult smokers, in the hopes that if they're smoking,  
9 that they will choose that brand.

10 Q. But, of course, there's no way to weed out  
11 the young kids who are watching the tennis matches and  
12 who are exposed to the brand name; is there?

13 A. Well, I believe that in choosing  
14 sponsorships, we choose those that attract a  
15 predominantly adult audience.

16 MR. ROSENBLATT: Page 31, Line 8:

17 Q. Obviously, there are infinitely more people  
18 watching on television than are watching in person;  
19 correct?

20 A. Virginia Slims has been sponsoring women's  
21 tennis since 1970. There was no television for women's  
22 tennis.

23 Q. Until when?

24 A. I think the first event was televised in the  
25 late 1970's and women's tennis has gotten sporadic

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1 coverage at best since then.

2 Q. So, back in 1970, have you told me pretty  
3 much all of the different kinds of sporting events that  
4 were being sponsored by Philip Morris?

5 A. Yes.

6 Q. Other than sporting events, other than that  
7 category, was Philip Morris involved in sponsoring  
8 other things?

9 A. From my perspective, the division I worked  
10 in, I pretty much told you everything that I remember  
11 that we were involved in.

12 Q. Was there some other division that was  
13 handling the sponsorship of things other than sports?

14 A. Yes.

15 Q. What was that division?

16 A. The art/cultural affairs division, which  
17 sponsored our arts involvement, et cetera.

18 Q. And who headed up that division?

19 A. I don't remember.

20 Q. Who was your boss in 1970?

21 A. Frank Saunders.

22 Q. And how long did he remain with the company?

23 A. He retired 10, 12 years ago. I don't  
24 remember exactly.

25 Q. When did Bill Campbell come to the U.S.?

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1 A. It was about ten years ago, give or take. I  
2 don't remember the exact date.

3 Q. And what position did he have when he first  
4 came to New York?

5 A. I think it was executive vice president of

6 marketing. It was the marketing slot in Philip Morris  
7 USA.  
8 Q. Could you describe for me the sponsorships in  
9 the cultural areas or art areas in 1970, even though  
10 you may not have been directly involved, so I'll have a  
11 handle on the kind of things that were being sponsored?  
12 A. I can't give you any specifics except to say  
13 that our cultural programs are sponsorships of the  
14 arts, whether it was ballet or art shows, et cetera,  
15 has been ongoing and existed back then. I don't know  
16 the details of the sponsorships.  
17 Q. For example, was there a sponsorship of opera  
18 in New York, let's say?  
19 A. I don't know.  
20 Q. Ballet?  
21 A. I don't know.  
22 Q. Was there sponsorship at some of the most  
23 famous museums in Manhattan such as the Metropolitan  
24 Museum of Modern Art?  
25 A. I don't know.

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1 Q. How about libraries back then?  
2 A. I don't know.  
3 Q. How many divisions were there structurally  
4 from the standpoint of sponsoring events? I gather  
5 there was kind of like a sporting division. Still  
6 talking about 1970.  
7 A. There was Philip Morris USA, there was Philip  
8 Morris International, and there was Philip Morris,  
9 Incorporated. And then --  
10 Q. Well, did Philip Morris International have  
11 anything to do with sponsoring events in the United  
12 States?  
13 A. Not in the United States, no.  
14 Q. What's the difference between Philip Morris  
15 USA and Philip Morris, Incorporated?  
16 A. Philip Morris, Incorporated was made up of  
17 some of the corporate services, like public relations,  
18 et cetera, and Philip Morris USA was the individual  
19 brands.  
20 Q. All right. Taking both Philip Morris,  
21 Incorporated and Philip Morris USA back in 1970, what  
22 other areas, other than sporting events and cultural  
23 events, were sponsored by either entity, Philip Morris,  
24 Inc. or Philip Morris USA?  
25 A. None that I remember.

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1 Q. How long did you remain administrator of  
2 product publicity?  
3 A. Until early 1972.  
4 Q. And what happened in the early '70s?  
5 A. I became assistant brand manager of Virginia  
6 Slims.  
7 Q. You were the assistant to who?  
8 A. John Granville.  
9 Q. What were your duties as assistant brand  
10 manager of Virginia Slims?  
11 A. Primarily working on our promotion mall  
12 programs, the sponsorships like Virginia Slims Tennis

13 or developing promotions for the brands, consumer  
14 promotions.  
15 Q. How does one develop consumer promotions for  
16 the brands?  
17 A. It involves looking at and attending meetings  
18 with suppliers, seeing what's available and might fit  
19 with the overall marketing objectives of the brand and  
20 then developing items that can be offered either as a  
21 self-liquidator or as something free with a purchase,  
22 et cetera.  
23 Q. Give us an example of the suppliers we're  
24 talking about and the items that we would be talking  
25 about.

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1 A. The items were anything from a T-shirt to  
2 panty hose, make-up brushes, a tool kit, those kind of  
3 things. The Virginia Slims engagement calendar has  
4 been going on since about 1972.  
5 Q. These items are basically given away free?  
6 A. Some are given away free. Some are what we  
7 call liquidated, sold for a price.  
8 Q. How are you using the word liquidated in this  
9 context?  
10 A. I'm using it in the context of the price of  
11 the item is passed along to the consumer. The consumer  
12 pays something to get the item.  
13 Q. In your job as assistant brand manager of  
14 Virginia Slims, were you still doing pretty much the  
15 same thing insofar as the tennis tournament was  
16 concerned or were you out of that altogether?  
17 A. I wasn't out of it. My job changed. I was  
18 not publicizing. I was handling most of the business  
19 side of what we were doing, negotiating our contract,  
20 and developing some of the materials that we used in  
21 conjunction with the event.  
22 Q. Do you get directly involved with negotiating  
23 the contract with the women's professional tennis  
24 organization?  
25 A. Yes, I do.

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1 Q. Were you the main negotiator on that for  
2 Philip Morris?  
3 A. Yes, I was.  
4 Q. How has the cost of that changed over the  
5 years?  
6 A. Well, it's increased.  
7 Q. What was the cost in the early '70s?  
8 A. Well, the first event was \$5,000, basically,  
9 and then it elevated over the years, obviously.  
10 Q. Into the millions?  
11 A. Into the millions, yes. As women's tennis  
12 prize money grew.  
13 Q. In terms of sponsorship, is Philip Morris  
14 putting up any money toward the prize money as well?  
15 A. Yes.  
16 Q. That's part of the cost?  
17 A. That's part of the cost, yes.  
18 Q. Do you put up all of the prize money?  
19 A. No, we do not.

20 Q. What percentage?  
21 A. It depends. If it's a Virginia Slims  
22 tournament, we might put up anywhere from 50 to 80  
23 percent of the prize money, depending on what the  
24 agreement is with the promoter of the events. If it's  
25 a non-Virginia Slims event, then we don't put up any of  
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1 the prize money.  
2 MR. ROSENBLATT: Page 40, Line 22:  
3 Q. And in terms of your career at Philip Morris,  
4 what happened in 1974?  
5 A. I became brand manager of Alpine.  
6 Q. To a smoker, what's the difference between  
7 Virginia Slims and Alpine?  
8 A. Alpine was a menthol only and still is a  
9 menthol only offering. Virginia Slims offers a fuller  
10 range of choices.  
11 Q. I assume this was a move up the ladder for  
12 you, both in terms of profession and in terms of going  
13 from assistant brand manager of Virginia Slims to brand  
14 manager of Alpine?  
15 MR. ROSENBLATT: You can answer that.  
16 A. Yes.  
17 MR. ROSENBLATT: And then --  
18 MR. HEIM: Bottom of the page.  
19 MR. ROSENBLATT: The bottom of 41:  
20 Q. Who did you report to?  
21 A. I believe that the VP of brand -- at that  
22 time was Jim Morgan.  
23 Q. Jim Morgan?  
24 A. Uh-huh.  
25 Q. Is he still with Philip Morris?  
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1 A. Yes.  
2 Q. In what capacity?  
3 A. Senior vice president of marketing.  
4 Q. Located in New York?  
5 A. Uh-huh.  
6 Q. Okay. What were your duties as brand manager  
7 of Alpine?  
8 A. I was responsible for developing the overall  
9 marketing plan for the brand and supervising the  
10 advertising, development of advertising, placement of  
11 advertising, media selection.  
12 Q. Did you have an outside advertising agency?  
13 A. Yes.  
14 Q. Who was that?  
15 A. Leo Burnett.  
16 Q. Is that the guy who came up with, "Come to  
17 Marlboro Country"?  
18 A. Yes.  
19 Q. Is he still living?  
20 A. No, he's not.  
21 Q. Back in 1974, what was a better seller,  
22 Alpine or Virginia Slims?  
23 A. Virginia Slims.  
24 Q. And part of your job was developing the  
25 marketing plan for Alpine. What was the marketing  
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1 plan?  
2 A. Alpine at that time was marketed with S&H  
3 Green Stamps. You bought a pack of Alpine, you get X  
4 number of S&H Green Stamps, and you could pick  
5 something out of the catalog.  
6 Q. Was there any other component to the  
7 marketing plan, other than the S&H Green Stamps?  
8 A. Advertising.  
9 Q. What was the thrust of the advertising? I  
10 seem to remember people skiing. Was that the motif,  
11 Alpine country?  
12 A. It was just a mountaintop. It was not actual  
13 skiers, but it was mainly the mountain.  
14 Q. Like Marlboro country with snow?  
15 A. Your words.  
16 MR. ROSENBLATT: Page 44, Line 2:  
17 Q. How long did that exist for Alpine?  
18 A. I don't know the answer.  
19 MR. ROSENBLATT: We go to Page 48, Line 13:  
20 Q. Why in the advertising is it so often  
21 stressed, lower tar and nicotine?  
22 A. It's a taste claim.  
23 MR. ROSENBLATT: And then continue your  
24 answer on Line 22:  
25 A. I believe it is a taste claim. There are  
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1 varying taste levels and different levels within a  
2 cigarette that produces different taste. I believe  
3 that's what's being conveyed to the smoker.  
4 MR. ROSENBLATT: Page 50, Line 11:  
5 Q. What is -- what is Philip Morris's policy  
6 about advertising in newspapers at the present time?  
7 A. We do use newspapers on occasion.  
8 Q. Within the last three years or so -- within  
9 the last three or so years, what would you say are the  
10 newspapers Philip Morris advertises most recently in in  
11 the newspaper category?  
12 A. I would say the major dailies around the  
13 country.  
14 Q. Are there newspaper that will not accept  
15 Philip Morris advertising?  
16 A. I know there's a newspaper in Washington that  
17 has recently said they will not accept advertisings. I  
18 don't know of others personally.  
19 Q. Which paper is that?  
20 A. I don't know which one it is, but it's in  
21 Washington State.  
22 MR. ROSENBLATT: Going to Line 15 on Page 51:  
23 Q. Are there any major national magazines that  
24 refuse to accept Philip Morris advertising?  
25 A. Readers' Digest does not accept, the New  
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1 Yorker does not accept, and I believe Good Housekeeping  
2 does not accept cigarette advertising.  
3 MR. ROSENBLATT: Page 55, Line 6:  
4 Q. Can you tell me, in the heyday of radio, what  
5 specific programs Philip Morris sponsored?

6 A. No, I can't.  
7 Q. Can you tell me any?  
8 A. No.  
9 Q. Same question with respect to television. Do  
10 you remember any of the television shows or programs  
11 that were sponsored by Philip Morris?  
12 A. Well, I know that Philip Morris sponsored I  
13 Love Lucy and Mission Impossible.  
14 Q. Do you remember which brand sponsored I Love  
15 Lucy?  
16 A. Philip Morris.  
17 MR. ROSENBLATT: Page 60, Line 25:  
18 Q. So other than advertising, then, what would  
19 have been your focus when you were with Benson &  
20 Hedges?  
21 A. Promotion, consumer promotion, incentive  
22 items, sweepstakes, those types of programs.  
23 Q. And if someone wanted to learn the history of  
24 the items, the give-aways, the commodities, Philip  
25 Morris retains a library on all of that stuff?  
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1 A. Yes.  
2 Q. Explain the sweepstakes.  
3 A. It was called Benson & Hedges 100  
4 Sweepstakes. It was obviously a play off of the length  
5 of the cigarette. It offered 100 prizes in increments  
6 of 100. So 100 hours of something or 100 inch long  
7 something or 100 dozen eggs. That was the concept.  
8 Q. What were the top prizes?  
9 A. It varied. It could be an automobile or a  
10 trip.  
11 Q. What did someone have to do to enter the  
12 sweepstakes?  
13 A. Just fill out an entry blank and send it in.  
14 Q. No money had to be sent in?  
15 A. No.  
16 Q. Does Philip Morris retain lists of all of the  
17 people who have entered sweepstakes?  
18 A. At that time, we absolutely did not have any  
19 lists, no.  
20 Q. How about since?  
21 A. There's a database.  
22 Q. Well, for example, more recently, Marlboro  
23 advertises a lot of items, and people send in things  
24 for products.  
25 A. That's right.  
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1 Q. That's been very successful; hasn't it?  
2 A. It's been successful.  
3 Q. And what is the mechanism whereby Philip  
4 Morris retains the names of all of the people that send  
5 in stuff?  
6 A. We have a database.  
7 Q. Meaning, as I understand it, a database that  
8 there's a means whereby Philip Morris can call up the  
9 names of anybody who's ever sent in one of the entry  
10 blanks or asked for a free product?  
11 A. If they're a qualified smoker, yes.  
12 Q. What is an incentive promotion?



13 A. As I described before, it could be a T-shirt.  
14 It could be a lighter.  
15 Q. What was your next position after Benson &  
16 Hedges?  
17 A. Director of merchandising materials.  
18 MR. ROSENBLATT: Page 64, Line 11:  
19 Q. What does the director of merchandising  
20 materials do?  
21 A. Develop point of sale materials and displays.  
22 Q. Okay.  
23 A. Develop and produce.  
24 Q. Is that pretty much it?  
25 A. That's it.

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1 Q. You've got to tell me what point of sale  
2 materials and displays are.  
3 A. Clocks, signs, displays that hold product,  
4 when you walk into a store and you see a display.  
5 Q. That names Marlboro or Parliament?  
6 A. Exactly.  
7 Q. How do you go about getting those displays  
8 into the stores; how does that work?  
9 A. Our sales force places them.  
10 Q. Does the store pay you or do you pay them?  
11 A. It depends. The store doesn't pay us. Many  
12 of them are placed without any charge at all, without  
13 any fee being exchanged.  
14 MR. ROSENBLATT: And we go to Line 20 on Page  
15 65:  
16 Q. When there is payment, it's Philip Morris  
17 that does the paying?  
18 A. That's correct.  
19 Q. Why would Philip Morris pay? In some  
20 instances, because the storekeeper would demand  
21 payment?  
22 A. Philip Morris would only pay for a display  
23 that contained product. Not for a sign.  
24 Q. Now, I see when I walk into different kinds  
25 of stores, there are these racks where they can keep,

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1 it seems, 50, 60 brands. Does Philip Morris give those  
2 out?  
3 A. In some cases.  
4 Q. Where does Philip Morris get those racks  
5 from, or does Philip Morris manufacture them directly?  
6 A. No. We would work with KOS designers,  
7 producers. There are companies that produce displays.  
8 Q. Other than clocks, signs and the racks, are  
9 we talking about anything else?  
10 A. Decals, ashtrays.  
11 Q. It's simply another form of advertising?  
12 A. That's correct.  
13 Q. How large a sales force are you talking about  
14 when you were director of merchandising materials?  
15 A. About 1,500 people.  
16 Q. All over the country?  
17 A. Maybe a little less.  
18 Q. All over the country?  
19 A. All over the country.

20 Q. And I assume, tell me if I'm correct, that  
21 their job is that they become rather sophisticated as  
22 to what is a desirable location, the kind of location  
23 that Philip Morris would want to be in, and then they  
24 talk to store owners and try to get them to accept a  
25 display? That's essentially what they do?

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1 A. That's correct.  
2 MR. ROSENBLATT: Okay. Page 72, Line 8:  
3 Q. What did you do to prepare for today's  
4 deposition, if anything? Did you have meetings?  
5 A. I had some meetings.  
6 Q. With who?  
7 A. My lawyer.  
8 Q. Just one lawyer?  
9 A. Yes.  
10 Q. How many meetings?  
11 A. Two or three.  
12 Q. When was the most recent meeting?  
13 A. We had breakfast together today.  
14 MR. ROSENBLATT: Page 73, Line 11:  
15 Q. Getting back to your new position as director  
16 of the events group --  
17 A. Yes.  
18 Q. -- what did that involve?  
19 A. That involved developing sponsorship  
20 opportunities and publicizing those that were  
21 involved -- that we were involved in, preparing  
22 materials, et cetera.  
23 Q. Why would you want to publicize the events  
24 that you were involved in? For the image of Philip  
25 Morris?

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1 A. Not primarily. If we were sponsoring an  
2 event and we wanted that event to be successful, the  
3 way of getting visibility for the event is creating  
4 publicity for it.  
5 Q. Part of your job was to create publicity for  
6 the event?  
7 A. For the event.  
8 Q. And how would you go about doing that?  
9 A. Creating press materials, sending them out to  
10 writers.  
11 Q. In the area where the event was occurring?  
12 A. Primarily.  
13 MR. ROSENBLATT: Line 23, Page 74:  
14 Q. During what time frame have you been director  
15 of the events group?  
16 A. 1982 to about 1983, the beginning of '84. A  
17 little over a year.  
18 Q. And tell me all of the events you remember  
19 sponsoring.  
20 A. Well, Virginia Slims Tennis, we had Marlboro  
21 Country Music, we had something called the Merit  
22 Opinion Poll, the Virginia Slims Opinion Poll, those  
23 major -- Marlboro Ski Challenge and the Marlboro Cup,  
24 the horse racing.

MR. ROSENBLATT: Page 79, Line 4:  
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- 1 Q. I want to know in terms of some of the major  
2 events, tell me the location of some of these major  
3 events.  
4 A. Marlboro Music was primarily in the  
5 southeast/southwest, Houston, Oklahoma City, Kansas  
6 City, Nashville.  
7 Q. What did it cost to sponsor Marlboro Music?  
8 A. I'd say about four to five million dollars a  
9 year.  
10 Q. Where was the tennis events occurring?  
11 A. Also various places. San Francisco, Los  
12 Angeles, Dallas, Philadelphia, South Florida, Boston.  
13 Q. And the cost of that each year?  
14 A. It varied.  
15 Q. About four or five million?  
16 A. Yes.  
17 Q. What other major events? We've talked about  
18 tennis and music.  
19 A. Marlboro Skiing, Ski Challenge, Marlboro Cup  
20 Auto Racing, the polls.  
21 Q. What was the location of the skiing events?  
22 A. Various ski mountains across the country.  
23 Q. What did that cost each year?  
24 A. About one million dollars.  
25 Q. And the sponsorship of the auto, where did

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- 1 that occur?  
2 A. That didn't start until later. Horse racing,  
3 we had Marlboro Cup horse racing when I was involved.  
4 Q. At Belmont Park?  
5 A. Yes.  
6 Q. What was the cost of that sponsorship?  
7 A. About one million dollars.  
8 Q. What was the particular brand involved with  
9 skiing?  
10 A. Marlboro.  
11 Q. And the particular brand involved with the  
12 auto sponsorship?  
13 A. We didn't have auto sponsorship at that time.  
14 Q. That came later?  
15 A. Yes.  
16 Q. Music was Marlboro?  
17 A. That's correct.  
18 Q. Tennis was Virginia Slims?  
19 A. That's correct.  
20 Q. And the horse racing, what brand?  
21 A. Marlboro.  
22 Q. So what was your next job after being  
23 director of the events group?  
24 A. Group director of brand management.  
25 MR. ROSENBLATT: And then we go to Page 92,

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- 1 Line 6:  
2 Q. I'd like you to describe some of the  
3 promotional programs that you actually developed.  
4 A. Me, personally?  
5 Q. Your department or you personally.

6 A. We developed something called Benson & Hedges  
7 Signature Collection, which was a collection of items,  
8 and each collection could be different. I think the  
9 first one was a portfolio and a tote bag and a suit  
10 bag.

11 For proof of purchase, you could send them  
12 in, and with a sum of money, get one or more of the  
13 items.

14 Q. That's one promotion. Tell me about some  
15 others.

16 A. Well, I mean, we used to develop things as  
17 simple as a lighter or a T-shirt or cap that might go  
18 on a pack of cigarettes. We developed sweepstakes  
19 ideas.

20 Q. In terms of the items of wearing apparel,  
21 like a T-shirt or a cap, what brands would be on them?

22 A. It would depend on which brand requested  
23 promotional support. It could be Parliament. It could  
24 be Marlboro. It could be Benson & Hedges. It could be  
25 Virginia Slims.

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1 Q. But at one time or another, all these various  
2 brands have used that?

3 A. Have used promotional items, yes.

4 Q. With their names on it?

5 A. Sometimes with their name on it. Sometimes  
6 with their name just on the label or not on it.

7 Q. Describe for me some of the sweepstakes that  
8 you have not already talked about.

9 A. We worked on something for Benson & Hedges  
10 that promoted the menthol packing, which was a Long  
11 Green Sweepstakes, and all of the items were green.

12 I can't remember any other sweepstakes idea  
13 specifically.

14 Q. In terms of items given away free, we've  
15 talked about caps and T-shirts. What other items?

16 A. Lighters, umbrellas.

17 Q. Umbrella with a logo on them?

18 A. Uh-huh. Ashtrays.

19 Q. How about trips?

20 A. I don't remember any trips at that period.

21 Q. Okay.

22 A. Maybe for Virginia Slims to Wimbledon, there  
23 may have been a sweepstakes for Wimbledon.

24 Q. What is the policy of Philip Morris giving  
25 out free cigarette samples at sporting events or music

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1 events?

2 A. It depends on the local ordinances. And then  
3 within that, it's strictly to adults over the age of 21  
4 who indicate that they are smokers.

5 Q. Who do you hire to give out those samples,  
6 just local people?

7 A. Sometimes we use our local sales force and  
8 sometimes we use local merchandising forces in the  
9 field.

10 Q. Do you have catalogs describing the various  
11 merchandising materials that people can get?

12 A. Merchandising materials are used only by our

13 sales force. It's not available to consumers.  
14 Q. I may be using the wrong term. A description  
15 of those items which are, in fact, available to  
16 consumers, do you have a catalog on that?  
17 A. During the promotional period, there would  
18 be -- if it were a catalog offering, a catalog would be  
19 made available.  
20 MR. ROSENBLATT: Page 98, Line 5:  
21 Q. What does the warning say about cancer on  
22 your packages of cigarettes?  
23 A. There are several warnings.  
24 Q. There's only one warning that talks about  
25 cancer; isn't there?  
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1 A. May cause.  
2 Q. The warning says that, what, cigarette  
3 smoking may cause cancer?  
4 A. Emphysema and birth defects, I think.  
5 There's a pregnancy warning on there, as well.  
6 MR. ROSENBLATT: Page 99, Line 1:  
7 Q. What is the information you've read?  
8 A. I've read articles, various things.  
9 Q. Can you name one specifically?  
10 A. Not really, no.  
11 MR. ROSENBLATT: Line 17:  
12 Q. Wouldn't you agree, in all honesty, that the  
13 vast consensus of the medical opinion in this country  
14 is that cigarette smoking does cause lung cancer, heart  
15 disease, emphysema and other diseases?  
16 A. I agree that there's a lot of information out  
17 there that supports that theory.  
18 Q. Well, in view of that, what do you say to a  
19 smoker who asks you, is the Surgeon General's warning  
20 accurate?  
21 A. I say I don't know.  
22 Q. To your knowledge, does anyone in the tobacco  
23 industry know? Does any one at Philip Morris know?  
24 A. I don't know.  
25 Q. Have you ever asked anyone at Philip Morris?  
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1 Have you ever asked anyone at Philip Morris, any  
2 scientific person, or any other person, whether the  
3 Surgeon General's warnings about the dangers of  
4 cigarette smoking are true?  
5 A. I have discussed with people at Philip Morris  
6 the evidence that may or may not be out there. I  
7 believe that it has not been scientifically established  
8 that cigarette smoking causes any of those diseases.  
9 MR. ROSENBLATT: Page 103, I asked part of  
10 the question on Line 11:  
11 Q. And so, I mean, on what basis are you saying  
12 that it hasn't been scientifically proven?  
13 MR. ROSENBLATT: And you answer it on Line  
14 22:  
15 A. I believe that it has not been scientifically  
16 established -- there has not been any animal testing.  
17 It's all epidemiology.  
18 They're entitled to their conclusions. I  
19 don't agree with them.

20 MR. ROSENBLATT: Page 105, Line 3:  
21 Q. What did the other mandated warnings deal  
22 with?  
23 A. Carbon dioxide, pregnancy.  
24 Q. Would it surprise you to learn that the  
25 warning that refers to cancer does not say that smoking  
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1 may cause cancer?  
2 A. It wouldn't surprise me, no.  
3 MR. ROSENBLATT: Page 107, Line 14:  
4 Q. Okay. What do you know about the Council for  
5 Tobacco Research?  
6 A. Not very much.  
7 Q. Do you know Dr. James Glenn?  
8 A. No, I do not.  
9 Q. What dealings do you have with the Council  
10 for Tobacco Research?  
11 A. None whatsoever.  
12 Q. Zero?  
13 A. Zero.  
14 Q. Do you know anything about the research they  
15 conduct?  
16 A. I do not.  
17 Q. Do you know whether the Council for Tobacco  
18 Research itself conducts research?  
19 A. I do not know any of the details.  
20 Q. What is Philip Morris's relationship to the  
21 Council for Tobacco Research?  
22 A. I don't know.  
23 Q. Do you know whether or not Philip Morris  
24 funds the Council for Tobacco Research?  
25 A. I don't know.  
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1 Q. You're not involved with that at all?  
2 A. Not at all.  
3 Q. If the Council for Tobacco Research  
4 periodically sends to Philip Morris literature,  
5 memorandums, annual reports, results of any research,  
6 do you get to see any of that?  
7 A. I've not seen any of it, no.  
8 Q. You've never seen any of it?  
9 A. No, I have not.  
10 MR. ROSENBLATT: Page 112, Line 14.  
11 Q. Had you ever heard of special projects in  
12 connection with the Council for Tobacco Research before  
13 you read the Wall Street Journal article?  
14 A. No, I have not heard of it before.  
15 Q. Do you know anything about special projects?  
16 A. No, I don't.  
17 MR. ROSENBLATT: Page 115, Line 7:  
18 Q. What is Philip Morris researching in  
19 Richmond; do you know?  
20 A. Specifically, I do not.  
21 Q. Even in a general way?  
22 A. I don't know what projects they're involved  
23 with. I don't get involved in that area.  
24 Q. At all?  
25 A. No.  
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1 Q. Generally, if I were to ask you like in the  
2 last 10, 15 years, what did they do at research and  
3 development at Richmond, could you tell me even in a  
4 general way?

5 A. I don't believe I'm qualified to comment on  
6 what they do in Richmond.

7 MR. ROSENBLATT: Page 116, Line 8.

8 Q. What is the Tobacco Institute?

9 A. It's the industry group, trade organization  
10 that represents all of the members of the tobacco  
11 industry on various issues.

12 Q. What dealings do you have with them?

13 A. I represent Philip Morris at management  
14 committee meetings of the Tobacco Institute.

15 Q. How often are their meetings held?

16 A. Approximately once a month, although not  
17 always.

18 Q. Where are they held?

19 A. Usually in Washington, at the Tobacco  
20 Institute headquarters.

21 Q. Who attends?

22 A. Various representatives from the  
23 participating companies.

24 Q. Who chairs those meetings?

25 A. Sam Chilcote.

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1 Q. President?

2 A. Yes.

3 Q. Anyone else on behalf of the Tobacco  
4 Institute generally attend the management committee  
5 meetings?

6 A. Yes. Curt Malmgren, who heads up state  
7 activities; Bob MacAdam, who works on special products;  
8 Brennan Dawson. Those are the primary people that are  
9 involved.

10 Q. The person that you said works on special  
11 projects, what special projects are you talking about?

12 A. State level legislation initiatives, things  
13 like that.

14 Q. How many people --

15 A. Tax -- oh.

16 MR. ROSENBLATT: Okay. Line 18:

17 Q. How many people usually attend these  
18 meetings?

19 A. It depends. There's usually a representative  
20 from RJ Reynolds and from Lorillard, American.

21 MR. ROSENBLATT: Page 119, Line 6:

22 Q. What other meetings does the Tobacco  
23 Institute have where other people from Philip Morris,  
24 other than yourself, would go, or that you would go to?

25 A. There's a state coordinating committee

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1 meeting that I go to on occasion, and Tina Walls, who's  
2 vice president of government affairs, goes to with  
3 regularity.

4 Q. How often are those meetings held?

5 A. The same.

6 Q. Monthly?  
7 A. Yes.  
8 Q. What kind of policy is set at the management  
9 committee meetings?  
10 A. Could you be more specific?  
11 Q. Yes. What's the purpose of the meetings?  
12 What kind of issues are decided or discussed?  
13 A. Normally, the primary issues have to do with  
14 taxation, restrictions.  
15 Q. Smoking bans?  
16 A. Smoking bans. Things that would impact the  
17 industry.  
18 Q. And part of the purpose of the meetings would  
19 be how to cope with these kinds of things, how to deal  
20 with them?  
21 A. That's correct.  
22 MR. ROSENBLATT: Page 121, Line 4:  
23 Q. What's your title now?  
24 A. Vice president of corporate affairs.  
25 MR. ROSENBLATT: Line 18:  
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1 Q. So, in terms of the chain of command at  
2 Philip Morris, what positions are before you?  
3 A. Steve Parrish, Bill Campbell.  
4 Q. That's it?  
5 A. In Philip Morris USA, yes.  
6 Q. Well, you are vice president of corporate  
7 affairs for Philip Morris USA?  
8 A. That's correct.  
9 MR. ROSENBLATT: And Page 122, Line 6:  
10 Q. Parrish's title is what again?  
11 A. General counsel and senior vice president of  
12 external affairs.  
13 Q. Is there anyone at your level -- in other  
14 words, in terms of the chain of command, it seems to me  
15 you're the number three person at Philip Morris USA.  
16 A. Only in my area of responsibility. There are  
17 other people at my level in other areas.  
18 MR. ROSENBLATT: Page 123, Line 6:  
19 THE COURT: Let's --  
20 MR. HEIM: That's where we stopped.  
21 THE COURT: Let me see.  
22 MR. ROSENBLATT: I think -- okay.  
23 MR. HEIM: We stopped there, Stan.  
24 MR. ROSENBLATT: Fine.  
25 THE COURT: I'm just trying to get --  
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1 MR. ROSENBLATT: I thought we went through  
2 Line 6 through 18 and then we stopped.  
3 MR. HEIM: That's fine. He can go ahead and  
4 read it if he wants.  
5 THE COURT: Let's leave it the way it is, and  
6 then we'll pick it up.  
7 MR. ROSENBLATT: Pick up on 123.  
8 THE COURT: We'll pick up 123, Line 6 when we  
9 come back.  
10 All right. So, that gives us twenty minutes  
11 after twelve. Come back here at 1:30 -- wait a minute,  
12 because we have some work to do.



13 MR. HEIM: We have to finish the rest of  
14 this.  
15 THE COURT: Yes. All right. Make it a  
16 quarter to two. Okay. 1:45.  
17 (The jurors exited the courtroom.)  
18 THE COURT: Okay. Let's finish up with this  
19 and then we all can go to lunch.  
20 Okay. Page 123, Line 6 through 18 is not  
21 opposed.  
22 19 through 25, overruled.  
23 Page 124, 1 through 25, overruled.  
24 MR. HEIM: Your Honor, can I stop you at this  
25 point, because just for a moment, if I may interrupt.  
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1 THE COURT: Yes.  
2 MR. HEIM: There's a whole lot of this stuff  
3 that comes in -- I mean, that is discussed in the back  
4 end of this deposition that has to do with political  
5 contributions to state and local and Federal lobbying.  
6 THE COURT: Yes.  
7 MR. HEIM: I mean, there's a bunch of it.  
8 I don't know whether the Court has -- you  
9 probably do have the objections we filed, but the  
10 thrust of my objection to all this is what does it have  
11 to do with any claim in this case?  
12 I mean, I know we've said before that it's  
13 protected activity, it's lobbying, it's First  
14 Amendment. And I know Your Honor has heard this  
15 argument. I'm not going to make those arguments again.  
16 But all of this stuff on lobbying and  
17 political contributions, it's irrelevant. I mean,  
18 there's nothing wrong with lobbying or political  
19 contributions. Every major corporation in the United  
20 States has lobbyists and makes political contributions,  
21 virtually, but why are we reading all this?  
22 It goes on for pages and pages and pages  
23 about it, and I think it becomes prejudicial at that  
24 point.  
25 MR. ROSENBLATT: It's a question of  
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1 influence, Judge. It's a question of what they do,  
2 their activities. They're defendants in the case.  
3 That's why I was asking Ellen Merlo about  
4 sponsorship. They touch every base. This is an  
5 industry which doesn't miss a trick. There's no  
6 comparable industry in America or the world that  
7 touches every base, whether it's cultural, whether it's  
8 art, whether it's sports, political contributions.  
9 They present themselves as a put-upon  
10 industry. It's important for us to show that they know  
11 how to function quite well, within the American  
12 political system, in terms of regulation and stuff like  
13 that. It's germane.  
14 MR. HEIM: Absolutely not, Judge.  
15 THE COURT: It goes to how deeply you want to  
16 get into it.  
17 MR. HEIM: It's terribly out of context to  
18 say that the automobile industry, many other  
19 industries, don't participate in the same activities,

20 the pharmaceutical industry. Yet it goes on and on.  
21 And it's part of the prejudice.  
22 THE COURT: Let's go through it. When we get  
23 to those points, we can review it.  
24 I think in the general context of what we're  
25 talking about now, the question on Line 19 through 25  
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1 is governmental affairs, the interaction, it's in  
2 general terms.  
3 124, Lines 1 through 25 is okay.  
4 MR. HEIM: Right there in the middle on Line  
5 12 is contributions to political.  
6 THE COURT: Now we get to 125. Overruled as  
7 to Lines 1 through 7.  
8 Okay. Then we get into the Washington  
9 office.  
10 All right. All right. I don't mind all of  
11 that. 125, 1 through 25 is all right.  
12 126 is denied, overruled.  
13 Now we get into some individual areas. I  
14 don't think there's any sense in going into it. So 18  
15 through 25 is sustained.  
16 Page 127, 1 through 7 is sustained.  
17 Moving over to 130, 13 through 21 I thought  
18 was repetitious. Sustain the objection.  
19 131, that whole page was either repetitious  
20 or argumentative, so I sustained the objection.  
21 132, 3 through 9 I also sustained.  
22 Argumentative and repetitious.  
23 137, 9 through 23, sustained.  
24 138, 1 through 4 sustained; 9, sustained; 12  
25 through 25, sustained.

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1 139, 1 and 2, sustained; 14 through 25,  
2 sustained.  
3 140, Lines 1 through 5, sustained; and 12  
4 through 18 -- no. Excuse me. That was a mistake on my  
5 part. 12 through 18 overruled.  
6 Now we get to 142, and we're talking about an  
7 exhibit which I'm not familiar with here, the Fred  
8 Panzer/Kornegay letter.  
9 MR. HEIM: Well, she is, too. She said she's  
10 never seen it before and doesn't know it. And it's  
11 dated 20 years before.  
12 THE COURT: Yes. Well, I marked it out, but  
13 I wasn't familiar with which document we were talking  
14 about.  
15 She says she had never seen it or read it and  
16 she wasn't a participant in it. I sustained the  
17 objection.  
18 So, on 143, Lines 1 through 12, sustained.  
19 144, 1 through 6, and 13 through 24,  
20 sustained.  
21 146, Lines 22 through 25, sustained.  
22 147, 1 through 9, overruled.  
23 12 through 17, overruled.  
24 18 through 25, sustained.  
25 148, 1 through 8, overruled; 11 through 19,  
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1 overruled; 20 through 25, sustained.  
2 149, 1 through 4, sustained; and 8 through  
3 25, sustained.  
4 150, 1 through 5, sustained.  
5 153, overruled, 9 through 19; 20 through 25,  
6 unopposed.  
7 154, 1 through 25, unopposed.  
8 MR. HEIM: Well, Your Honor, I should have  
9 opposed it. It's ETS.  
10 THE COURT: I'm sorry.  
11 MR. HEIM: I agreed that it does -- it isn't  
12 marked on here as being opposed, but belatedly I oppose  
13 it because it's an accommodation program. It's ETS,  
14 and I made this argument.  
15 THE COURT: I tell you the truth, I marked it  
16 off until I realized you hadn't objected. And I said,  
17 well, they didn't object; they had a reason. But  
18 apparently --  
19 MR. HEIM: I'll have to fire whoever didn't  
20 object to it. No. I'm only kidding.  
21 THE COURT: We're talking about banning at  
22 the airport and all that sort of thing.  
23 MR. HEIM: It's irrelevant.  
24 THE COURT: Yes. That's why I had marked it  
25 off. And I looked it over again, and I said, well,  
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1 they didn't object, so there had to be a reason.  
2 MR. HEIM: Well, I do object.  
3 THE COURT: You do. Okay.  
4 Well, I would agree with you on that.  
5 MR. HEIM: Beginning on Line 20 on 153.  
6 THE COURT: No. I think that we ought to go  
7 with 20 through 25 on 153 and Lines 1 through 6 on 154.  
8 MR. HEIM: Okay.  
9 THE COURT: And then the rest, I think, 7  
10 through 25, is out.  
11 And on 155, 1 through 25, sustained; as is  
12 156, 1 through 25.  
13 And 157, 1 through 12.  
14 Okay. 159, 15 through 25 was sustained.  
15 160, 1 through 25, sustained.  
16 161, 1 through 15, sustained.  
17 164, 3 through 16, sustained.  
18 Now, I don't know why we got into New York,  
19 political contributions in New York. They don't seem  
20 to relate.  
21 So 166, 11 through 25, sustained, unless you  
22 want to ask David Dinkins -- be that as it may.  
23 167, the same situation.  
24 All right. Then we get down to -- Line 21 is  
25 sustained. Line 22 is a question on addiction.  
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1 I allowed 22 through 25 and Line 1 on Page  
2 168; 2 through 25, I sustained.  
3 169, 1 through 18, sustained; 19 through 24,  
4 overruled.  
5 25 on 169, sustained; as is Lines 1, 2 and 3

6 on 170.  
7 Lines 9 through 13 on 170, sustained.  
8 I allowed the question on 14, 15 and 16 on  
9 Page 170.  
10 And then you skip from there to Page 171,  
11 Line 6. The rest is out.  
12 So 170, 18 through 25 would be out.  
13 171, 1 through 5 would be out.  
14 Pick up the answer on Line 6, 171.  
15 And overrule the objections from 6 through  
16 25.  
17 On Page 172, Line 1 through 19, overruled.  
18 Okay. Now we get into the lobbyists.  
19 They're just talking names.  
20 MR. HEIM: Well, 172, where it says: What is  
21 the main function of the lobbyist --  
22 THE COURT: It appears to be somewhat  
23 repetitious, but let me just go back.  
24 172, you said?  
25 MR. HEIM: Yes.  
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1 THE COURT: Lobbyists deal with multiple  
2 issues, including smoking bans.  
3 All right. It didn't make much sense, you  
4 know, talking about it. Mainly because nobody would  
5 care who they are.  
6 So 175, 10 through 25, sustained.  
7 1 through 7 on Page 176, sustained.  
8 MR. HEIM: Judge, I'm sorry. I didn't get  
9 what you just ruled on 172.  
10 THE COURT: 172?  
11 MR. HEIM: Right. From 3 to 19.  
12 THE COURT: I thought I did.  
13 MR. HEIM: I just didn't catch what you did  
14 with that.  
15 THE COURT: I allowed that.  
16 MR. HEIM: You allowed that in?  
17 THE COURT: Yes. Yes. I thought that was  
18 all background of lobbyists. That's why I'm not  
19 getting into lobbyists on 175 and 176.  
20 And so 176, 1 through 7 I talked about.  
21 And 8 through 13 is sustained, and 17 through  
22 23 is sustained.  
23 Let's see what I marked that one for. Yes.  
24 All of the way down through Line 25, sustained.  
25 177, 1 through 5, sustained.  
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1 And 12 through 16, sustained.  
2 Now we get into something else.  
3 17 through 25 on Page 177, overruled.  
4 178, Lines 1 through 25, overruled.  
5 179, 1 through 5, overruled.  
6 I'm on 186. Should start with Line 12. So  
7 Line 12 through 25 is overruled; as is 187, Line 1  
8 through 19.  
9 Page 191, the secondhand smoke issue, so I  
10 excluded 11 through 18.  
11 193, 9 through 23, sustained.  
12 199, I wasn't sure where you were going with

13 that. 10 through 16, I don't know if it's innocuous or  
14 not.

15 What's the materiality to all of this, 10  
16 through 16?

17 MR. ROSENBLATT: 10 through 16?

18 MR. HEIM: International.

19 MR. ROSENBLATT: That's okay. We'll withdraw  
20 that.

21 THE COURT: Then 17 through 25, you're  
22 talking about external affairs and Mr. Parrish.

23 MR. ROSENBLATT: She said, you know, Parrish  
24 and Campbell are the only two people really above her.

25 THE COURT: Ahead of her. Well, they could  
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1 talk about it, I guess.

2 17 through 25, overruled.

3 200, 1 through 4, overruled.

4 Now we get into a hearsay issue. Who is this  
5 person, Dr. Carchman? Who's he?

6 MR. HEIM: He's a scientist at Philip Morris.

7 THE COURT: Well, it looked to me like all of  
8 that was hearsay.

9 MR. ROSENBLATT: There's been a lot of issues  
10 where, you know, where do you get your information  
11 from? And these were in-house Philip Morris people  
12 from which she's developed her views.

13 THE COURT: I realize that.

14 MR. HEIM: He will be a witness in this case.

15 THE COURT: He will or will not?

16 MR. HEIM: He will.

17 MR. ROSENBLATT: All the more reason to  
18 include this.

19 MR. HEIM: Well, you know, I didn't want to  
20 mislead you and let you think that he wasn't. He will  
21 be here to testify.

22 MR. ROSENBLATT: Carchman.

23 MR. HEIM: Uh-huh.

24 THE COURT: All right. You know, you can  
25 look at it two ways. It's being said for the fact that  
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1 it was said not for the truth, because she's only  
2 paraphrasing what was said. You know, if you go down  
3 to 19, you look at that question. You say that's your  
4 view. That's the view you got from Carchman.

5 So, I'm not so sure it's damaging in any way.

6 MR. HEIM: Well, I actually think, you know,  
7 to be fair, since he is going to testify, I don't -- I  
8 don't think I have a problem with it.

9 THE COURT: Okay.

10 MR. HEIM: Down through --

11 THE COURT: It runs up to Page 201.

12 MR. HEIM: Right. Line 3.

13 THE COURT: So that's okay.

14 Then on 3 -- correction, 4. Line 4. Excuse  
15 me.

16 MR. HEIM: I object to that.

17 THE COURT: Why?

18 MR. HEIM: Because she has no competence in  
19 this area, and she -- there's no foundation for her to

20 talk about safer cigarettes. That's not what was being  
21 asked of her before. She was being asked about how she  
22 learned what she said earlier.

23 THE COURT: Yes. But the job that she's in,  
24 it seems to me she would be aware of it.

25 MR. HEIM: You know what? I don't think I  
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1 object to it, now that I think about it, because the  
2 question is: Are you aware of any safer cigarettes  
3 that have ever been developed but which have not been  
4 marketed?

5 And she said: I don't know.

6 THE COURT: Yes.

7 MR. HEIM: Well, it's actually kind of  
8 confusing, you know.

9 THE COURT: You can sit there and analyze all  
10 this stuff. But I always worked on the general  
11 principle, if it didn't hurt, then don't complain.

12 MR. HEIM: Well, then, I won't complain.  
13 That's pretty much my principle, too.

14 THE COURT: 204, the Philip Morris magazine,  
15 that's something new. I never saw that before.

16 So she talks about the Philip Morris  
17 magazine. Overrule the objection.

18 Page 205, 1 through 19, overruled.

19 208, and we're talking about the label and  
20 warnings.

21 I let in 8 through 18 and kept out the rest,  
22 19 through 23; and 209, 2 through 5, 17 and 18 and 21  
23 through 23.

24 MR. HEIM: Help me with this again, Judge.

25 208 --

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1 THE COURT: Go back to 208. I allowed 8  
2 through 18.

3 MR. HEIM: Okay.

4 THE COURT: And the rest of it I sustained.

5 MR. MOSS: On the following page.

6 THE COURT: And the next page, 209.

7 MR. HEIM: I got it.

8 THE COURT: And the next Page 210.

9 And the next page, 211. And the top of 212,  
10 1 through 3.

11 Overrule the objection on Line 21 through 25  
12 on 212.

13 Overrule the objection on 213.

14 Overrule the objection on 214.

15 And that's it.

16 Okay. So, that's good. It's quarter of one.  
17 It gives us an hour.

18 You take the extra 15 minutes.

19 MR. MOSS: No, sir. I'll be here.

20 MR. ROSENBLATT: Mr. Moss will be back at  
21 two.

22 MR. MOSS: The truth of the matter, Judge,  
23 I'll be back a little later. I have a hearing at 1:30.  
24 (A lunch recess was taken at 12:45 p.m.)  
25

TAYLOR, JONOVIC, WHITE & GENDRON

